

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1941

B
P/s

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff, Appellee

VS.

NICHOLAS D. ZINNI ET AL,
Defendant, Appellant

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

APPENDIX TO
BRIEF FOR DEFENDANT-APPELLANT

(From Court's Denial of Motion for New Trial
Based Upon (1) Newly Discovered Evidence, and
(2) Prosecutorial Suppression of Material Evidence.)

By His Counsel,

C. Thomas Zinni
53 Mount Vernon Street
Boston, Massachusetts 02108

Charles P. Ferland
275 North Main Street
Danielson, Connecticut 06239

PAGINATION AS IN ORIGINAL COPY

RELEVANT DOCKET ENTRIES

[Criminal No. H-524]

UNITED STATES OF AMERICA

VS.

NICHOLAS D. ZINNI ET AL

Nicholas Zinni--C. Thomas Zinni
53 Mount Vernon Street
Boston, Massachusetts 02108
Phone--(617) 523-3245

- 1973
June, 14 The Grand Jury at Hartford returned... Indictment charging violation of 18 USC 241 in ct. 1...18USC 1503 in ct. 2... 18 USC 844 (h) (1) in ct. 3...
- 25 Defendant Zinni...Plea of not guilty entered on 3 counts.
- 29 The following motions were filed by defendant Zinni:
- (2) Motion to be furnished with evidence favorable to the accused.
- (9) Motion of the defendant for the production of police department reports
- (13) Motion to inspect exhibits presented to the Grand Jury.
- (14) Motion of the defendant to inspect evidence.
- (21) Motion for discovery and inspection.
- July, 23 Hearing on 25 calendar motions:
- Aug. 6 The following endorsements entered on defendant Zinni
- (2) Motion to be furnished with evidence favorable to the accused, "July 23, 1973, the Defendant Zinni's motion to be furnished with evidence favorable to the accused through the conclusion of trial was agreed to by counsel for the government, provided the obligation was limited to the requests of Brady vs. Maryland (373 U.S. 83,1962), and it was so mutually agreed; so ordered." (Clairie,J.) m-8/10/73
- (9) Motion of the Defendant for the production of police department reports, "July 23, 1973, the motion is denied; except that the government will have available all

relevant police reports for review by counsel at 9:00 a.m. on the day such evidence is to be used at trial; so ordered." (Clairie, J.) m-8/10/73

- (13) Motion to inspect exhibits presented to the Grand Jury, "July 23, 1973 Motion denied." (Clairie, J.) m-8/10/73
- (14) Motion of the defendant to inspect evidence, "July 23, 1973, the Motion is denied; except that the government shall make available to the defendant any pieces of evidence, on which the government has performed scientific tests or experiments, which evidence will be offered at trial, it shall be made available at the office of the U.S. Attorney at Hartford at a time mutually agreeable to counsel; so ordered." (Clairie J.) m-8/10/73
- (24) Motion for discovery and inspection "July 23, 1973
- (1) Paragraphs #1, 2, 4, 18, and 19 (limited to Brady v. Maryland) are granted
 - (2) Paragraphs #3, 5, 6, 7, 8, 10, 11, and 17 are denied.
 - (3) As to paragraphs #12, 13, 14, 15, and 16, the government reports there are none.
 - (4) Paragraph #9 shall be provided at 9:00 a.m. on the date of trial, when the witnesses testimony will be offered; so ordered." (Clairie J.) m-8/10/73

<p>1974</p> <p>May 28,</p> <p>June 12</p> <p>18</p> <p>26</p> <p>July 5,</p> <p>19</p> <p>Sept. 5</p>	<p>Jury Trial: (Marrapese and Zinni) Attorney Coffey moves for admission of Attorney Ferland (as counsel for the defendant Zinni) for purpose of this case.</p> <p>Defendant Zinni moves for severance--Denied...Jury returns to courtroom with a verdict of Guilty on all three counts as to each defendant...</p> <p>Defendant Zinni--Motion for new trial, motion to set aside verdict.</p> <p>Hearing held on Defendant Zinni's motion for new trial, motion to set aside verdict and for judgment of acquittal; motion to arrest judgement, all motions denied... DISPOSITION: (3 counts) Defendant Zinni, imprisonment for the remainder of his life on count 1, five years imprisonment on count 2 and ten years imprisonment on count 3. Sentences of imprisonment imposed on counts 1, 2, & 3 are to run concurrently with each other. (Murphy J.) m-6/28/74</p> <p>(Defendant Zinni) Notice of appeal filed.</p> <p>Defendant's (Zinni) motion for a new trial based on (1) newly discovered evidence and (2) prosecution's suppression of material evidence, filed.</p> <p>Hearing held on Defendants motion for new trial.</p>
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3.

- 6 Hearing on Defendant's motion for a new trial continues.
- 16 Defendant Zinni's memorandum in support of motion for a new trial filed.
- 30 Court reporter's transcripts (2 Vols) of proceedings held on September 5 and 6, 1974, filed in Hartford, (Collard R.)
- Oct. 3 Hearing on Defendant's third motion for a new trial (Joost and Guillette)
- 24 Memorandum filed (Murphy,J.) m-10/29/74 ".....the motions are denied".
- 29 Memorandum, filed, (Murphy,J.) m-10/29/74 "...motion to submit additional evidence on defendant's motion for a new trial, dated October 22, 1974, is denied. In denying the motion we will assume that Sgt. McDonald would testify substantially as indicated in the motion papers. This is an order."...
- Nov. 4 Two notices of appeal, filed by Defendant Zinni
- 11 Endorsement entered and filed on motion to submit additional evidence on Defendant's motion for a new trial on newly discovered evidence and prosecution misconduct." Motion denied as set forth in our memorandum of October 29, 1974, November 6, 1974, Thos. F. Murphy,USD J.
- 12 Defendant-appellant Zinni's Motion for a new trial based upon additional newly discovered evidence, (and/or prosecution suppression of material evidence.), filed.

UNITED STATES OF AMERICA)
)
 v.) CRIMINAL NO. 100-10700
)
 DAVID GUILLETTE, ROBERT JOOST,)
 WILLIAM MARRAPese, NICHOLAS ZINNI)

From on or about May , 1972 until on or about September 29,

All in violation of Section 241, Title 18, United States Code.

On or about September 29, 1972, in the District of Connecticut, David Guillette, Robert Joost, Nicholas Zinni and William Marrapese unlawfully, wilfully and knowingly endeavored, by force and violence, to influence, intimidate and impede Daniel Lepolla, a witness in a Court of the United States, a witness in the matter of the United States v. William Marrapese, Nicholas Zinni, David Guillette and Robert Joost, Criminal No. M-264, which was before the United States District Court for the District of Connecticut.

All in violation of Title 18, United States Code, Section 1503.

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES OF AMERICA

v.

DAVID GUILLETTE, ROBERT JOOST,
WILLIAM MARRAPESE, NICHOLAS ZINNI

CRIMINAL NO. 524

GOVERNMENT'S RESPONSE TO DEFENDANT
MARRAPESE'S MOTION FOR DISCOVERY AND
INSPECTION

Now comes the United States of America by and through its attorney Paul E. Coffey, Special Attorney, United States Department of Justice, and states that it will allow the defendant Marrapese in the above-captioned case to inspect, copy, and photograph the following items or copies thereof, within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known by the attorney for the government:

(1) any reports of any kind by an expert or scientific authority pertaining to any instruments, substances, or means used to procure the death of Daniel Lapolla; also results or reports of any scientific tests or experiments made in connection with this case, as provided in Rule 16(a), Fed. R. Crim. P.

(2) Relevant written or recorded statements or confessions, if any, made by the defendant, as provided for by Rule 16(a), Fed. R. Crim. P. Defendant's request for any and all statements made by co-defendants herein is a means of unauthorized discovery, going far beyond generally recognized bounds and is objected to by the government. The government submits that statements of co-defendants or co-conspirators are not discoverable unless they testify on behalf of the government and their statements fall within the provisions of 18 U.S.C. 3500, the Jencks Act. Rule 14, Fed. R. Crim. P., provides for disclosure of co-defendants statements under certain circumstances. Under Rule 14, when ruling on motions for severance, the court may require the government to deliver any statements or confessions made by defendants which the government intends to introduce at trial for in camera inspection. (emphasis added).

(3) Relevant books, papers, documents, and tangible objects obtained from the defendant Marrapese only, as provided in Rule 16(b), Fed. R. Crim. P.

With respect to all other requests made by the defendant in his Motion for Discovery and Inspection, the government submits that they should be denied.

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UNITED STATES DISTRICT COURT CLERK
U.S. DISTRICT COURT
DISTRICT OF CONNECTICUT HARTFORD, CONN.

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 524

DAVID GUILLETTE, ROBERT JOOST,
WILLIAM MARRAPESE, NICHOLAS ZINNI

MOTION TO BE FURNISHED WITH EVIDENCE
FAVORABLE TO THE ACCUSED

Now comes the defendant in the above numbered Indictment and moves this Honorable Court to direct the United States to furnish the defendant with all evidence which is of an exculpatory nature, or which may be favorable to the accused, which is within the possession, custody and control of or within the knowledge of the prosecuting officer during the pendency of all matters relating to the Indictment. Such evidence includes but is not limited to

- (1) any evidence that can be used for the purpose of impeaching the credibility of witnesses that the United States intends to rely upon in support of the matters referred to in the Indictment,
- (2) statements which would reasonable tend to show that the accused did not commit the offense charged, (3) evidence which would reasonable tend to show that the accused did not commit the offense charged, (4) statements which are inconsistent with statements made by parties other than the declarant, (5) inconsistent statements made by a declarant to law enforcement officers, and
- (b) prior inconsistent statements from those testified to during the course of the trial.

WILLIAM MARRAPESE
By his Attorney

Charles W. Beebe

One of two

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U.S. DISTRICT COURT
HARTFORD, CONN.

July 3, 1973. The Defendant's Motion to be furnished with evidence is well in the amount that the conviction of this case is limited to the defendant's statements, provided that it was so duly agreed.

*2-15-73
W.P.S.*

1. Defendant's request for any photographs of the deceased and/or of the scenes of the acts charged as set forth in Counts I, II, and III of the indictment, should be denied under the requirements of Rule 16(b). Rule 16(b) states that discovery of such items should be granted only upon a showing of materiality to the preparation of the defense.

Courts have uniformly denied "fishing expeditions" and blanket requests for discovery in the absence of specificity and some showing of materiality and good cause. United States v. Conder, 423 F. 2d 904 (6th Cir. 1970) cert. denied, 400 U.S. 958; United States v. Eley, 335 F. Supp. 353 (N.D.Ga. 1972); United States v. Iannelli, 53 F.R.D. 482 (S.D.N.Y. 1971); United States v. Edwards, 42 F.R.D. 605 (S.D.N.Y. 1967).

Since defendant Marrapese has made no such showing of materiality to his defense in the present case, court should deny defendant's motion.

2. Defendant's request for any and all reports concerning statements of witnesses should be denied under authority of the Jencks Act, 18 U.S.C. 3500. Section 3500(a) specifically states that:

In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a government witness or prospective government witness (other than the defendant) shall be the subject of subpoena, discovery, or inspection until said witness has testified in the trial of the case. (emphasis added).

See also United States v. McMillen, _____ F.2d _____ (Cr. No. 72-1648, 7th Cir., October 17, 1972), where the Seventh Circuit Court of Appeals held that the Jencks Act and Fed. R. Crim. P. 16(b) prohibited the district court from granting production of statements of government witnesses before they have testified at trial. Relying on the clear authority of the Jencks Act the government states its willingness to provide all the relevant written and recorded statements of its witnesses at the time of trial but not beforehand.

3. Defendant's request for any and all statements made by witnesses concerning the crimes alleged in the indictment should be denied for the same reasons as indicated in paragraph 2 immediately above.

4. Defendant's request for the names and addresses of all witnesses to the crimes alleged in the indictment should be denied. Neither case law nor statutory authority supports defendant's position. Courts have uniformly refused to grant requests for disclosure of the names and addresses of government witnesses prior to trial. Such requests have been ruled improper both under Rule 7(f); United States v. Cansler, 419 F.2d 952, 954 (7th Cir. 1969), cert. denied, 397 U.S. 1029 (1970); Yeorgain v. United States, 314 F.2d 881, 882

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(9th Cir. 1963); United States v. Hasiwar, 299 F.Supp. 1053 (D.C.N.Y. 1969); and under Rule 16; United States v. Cole, 435 F.2d 902, 905 (8th Cir. 1972), cert. denied, 406 U.S. 922; Rosenzweig v. United States, 412 F.2d 844, 845 (9th Cir. 1969); United States v. Callahan, 300 F. Supp. 519, 525 (D.C.N.Y. 1969); United States v. Zirpolo, 288 F.Supp. 993, 1019 (D.C.N.J. 1968); rev'd. on other grounds, 450 F.2d 424 (3rd Cir. 1971).

The defendant Marrapese has indicated no reason why such discovery should be granted at this time.

5. Defendant's request for a summary reflecting the criminal records of all persons whom the government intends to call as witnesses, or might call as witnesses should be denied. Courts have uniformly held that defendants are not entitled to be furnished with the criminal records of prospective government witnesses prior to trial. United States v. Conder, 423 F.2d 904 (6th Cir. 1970), cert. denied, 400 U.S. 958; Hemphill v. United States, 392 F.2d 45, 48 (8th Cir. 1968); United States v. Mavrogiorgis, 49 F.R.D. 214 (S.D.N.Y. 1969); United States v. Gardner, 308 F. Supp. 425, 249 (S.D.N.Y. 1969); United States v. Withers, 303 F. Supp. 641, 645 (N.D. Ill. 1969).

6. Defendant's request for the grand jury testimony of persons whom the government may or may not call as witnesses at trial should be denied under the authority of the Jencks Act, 18 U.S.C. 3500, which controls the production of grand jury minutes. The Jencks Act prohibits the obtaining of the grand jury testimony of government witnesses before that witness has testified at trial. United States v. Johnson, 414 F.2d 22, 28-29 (6th Cir. 1969), cert. denied, 397 U.S. 991; United States v. Quintana, 457 F.2d 874, 878 (10th Cir. 1972).

Further, the deleterious effect of the defendant's request is clear and reveals the identity, pre-trial, of the government witness. The Federal Rules of Criminal Procedure have never required the disclosure of the names of witnesses who gave testimony before the grand jury. It is also against the policy of Rule 6(e), Federal Rules of Criminal Procedure, to disclose the names and/or addresses of all witnesses who appeared before the grand jury due to the fact that many of these witnesses may not be called to testify at trial and, to disclose their names, would not serve any interest of justice but would instead interfere with the witnesses' expectations of privacy.

7. The defendant's motion for the statements of all persons questioned by the government in this matter and whom the government does not presently intend to call at trial should be denied. The government is not required to furnish the defense with the statements of any witnesses it does not propose to call. United States v. Cole, 453 F.2d 902 (8th Cir. 1972) cert. denied, 406 U.S. 922; United States v. Wolfson, 294 F.Supp. 267, 277 (D. Del. 1968).

8. The government is not presently aware of any electronic surveillance conducted by the government which resulted in any overhearings related to any matter in this case, except for the electronic monitoring of a conversation of defendants Marrepese and Zinni on March 31, 1972. The tape recording of this conversation is a matter of record, it having been admitted in evidence at the trial of United States v. William Marrepese, et al, Criminal No. H-264 (D. Conn. 1972).

9. The defendant's request for all government inter-departmental correspondence memoranda pertaining to the taped conversation mentioned in paragraph 8, above, should be denied. Rule 16(b) specifically excludes from documentary discovery by the defendant:

the discovery or inspection of reports, memoranda, or other internal government documents made by government agents in connection with the investigation or prosecution of the case.

Courts have consistently denied requests for discovery which merely amount to a rummaging through the government's files. United States v. Deardorff, 343 F. Supp. 1033, 1044 (S.D.N.Y. 1971); United States v. Anzelmo, 319 F. Supp. 1106, 1129 (E.D. La. 1970); United States v. Elife, 43 F.R.D. 23 (S.D.N.Y. 1967); United States v. Westmoreland, 41 F.R.D. 419, 427 (S.D. Ind. 1967).

The government is aware of its obligation to provide exculpatory material to the defendant. At the present time, the government is not aware of any such material with respect to the defendant Marrepese.

STEWART H. JONES
UNITED STATES ATTORNEY

By: Paul E. Coffey
Special Attorney

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 524 5019

WILLIAM MARRAPESE, ET AL

DEFENDANT'S MOTION FOR DISCOVERY AND INSPECTION

By Court order former defense counsel Andrew Buccì was prohibited from further acting in this capacity. Defendant, of necessity, was required to retain substitute counsel. All pre-trial motions formerly made were filed and argued by Mr. Buccì, and it was Mr. Buccì who inspected those items ordered discoverable by Court order. Present defense counsel has not had the opportunity to discover, inspect and/or copy these discoverable items. Present defense counsel respectfully requests in order to prepare for trial in this matter that he personally be allowed to discover, inspect and/or copy each and every item previously ordered discoverable by this Honorable Court including but not limited to the following:

- ✓ (1) Written or recorded statements, admissions or confessions or written summaries of oral statements or confessions, made by the defendant, or copies thereof, within the possession, custody or control of the Government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Government.
- ✓ (2) Written or recorded statements, admissions or confessions or written summaries of oral statements or confessions, or copies thereof, which the Government intends to introduce at trial and which were made by a co-defendant who is to be tried together with the moving defendant.

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U.S. DISTRICT COURT
HARTFORD, CONN.

RAYMOND J. DANIELS
ATTORNEY AT LAW
85 WEYBOSSET STREET
PROVIDENCE, R. I. 02903

May 3, 1974.

"The defendant's motion for discovery and inspection is granted as to paragraphs 1, 2, 3, 4, 5, 10, 11, 13, 16, and 17; it is denied as to paragraphs 6, 7, 8, 9, 12, 14, and 15." So ordered - [Signature]

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA)
v.)
WILLIAM MARRAPESE et. al.)

CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

CRIMINAL NO. H-524

MOTION OF UNITED STATES FOR DISCOVERY AND INSPECTION;
RULE 16(c), FEDERAL RULES OF CRIMINAL PROCEDURE

On April 29, 1974 the defendant, William Marrapese, filed a motion for Discovery and Inspection which requested, inter-alia, the disclosure and inspection of physical items, reports of mental examinations, tangible objects, scientific reports, books, papers and documents and similar type items which the government intends to introduce into evidence, or which it has in its possession. Most, if not all of the items requested in this regard, are subject to the provisions of Rule 16(a) and (b). If the Court grants relief to the defendant, with respect to the requested items, the United States requests the Court to condition such disclosure by requiring a defendant to permit the government to inspect and copy its scientific or medical reports, books, papers, documents, tangible objects which the defendant intends to introduce at trial and which are within his possession.

STEWART H. JONES
STEWART H. JONES

Paul E. Coffey
PAUL E. COFFEY
Special Attorney
U.S. Department of Justice

CERTIFICATION

This is to certify that a copy of the forgoing Motion was mailed, postage prepaid, to Raymond J. Daniels, Esquire, 86 Weybosset Street, Providence, Rhode Island, 02903 and C. Thomas Zinni, 53 Mount Vernon Street, Boston, Massachusetts, 02108 on this 2d day of May, 1974 at Hartford, Connecticut.

Paul E. Coffey
PAUL E. COFFEY
Special Attorney
U.S. Department of Justice

May 3, 1974

Motion granted to by counsel
for William Marrapese, Plaintiff of May 10, 1974

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U.S. DISTRICT COURT
HARTFORD, CONN.

//

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* * *

19 [65] Q Are you familiar at all, Agent Weronik, with
20 whether or not there were fingerprints found on the battery
21 and on the wood or on the tape or anything found at the
22 bomb scene?

23 A Yes, sir.

24 Q And were there, in fact, impressions found on
25 some of those articles?

1 [66] A Yes, sir. There were partial latent prints
2 found on the battery.

3 Q Were they found in your presence?

4 A Yes.

5 Q And on what articles were these fingerprints
6 found?

7 A On the six volt Rayovac heavy duty lantern battery
8 and on portions of the black electrical tape that held the
9 battery to the wood block.

10 Q How many fingerprints were found on the tape?

11 A As I recall, there were five partial latent
12 prints found.

13 Q And how many fingerprints were found on the
14 battery?

15 A Let me correct that. There were five partial
16 prints found in total. I don't know offhand what the
17 breakdown was between the battery and the tape.

18 Q All right. Did you participate in the lifting

19 of those latent prints from those articles?

20 A No. I did not. However, it was done at my
21 direction by Sergeant McDonald of the State Police.

22 Q All right. Now, where are those latent prints,
23 the lifts?

24 A They would be in the possession of Sergeant
25 McDonald, Connecticut State Police in Bethany.

1 [67] Q Are they available?

2 A As far as I know, they are, sir.

3 MR. DANIELS: All right. Thank you
4 very much. Nothing further.

M.N.T. TR. 102, (9/5/74).

3 [102] Q What did Sergeant McDonald say?

4 A Sergeant McDonald, pursuant to my subpoena, came to
5 the office right off this courtroom here approximately nine
6 o'clock on the morning he testified. I told Sergeant McDonald
7 that during the course of the trial, Mr. Daniels had elicited
8 from several Government witnesses his name, that is, Sergeant
9 McDonald's name, as having taken fingerprints. And I told
10 Sergeant McDonald that while a Government expert, Mr. Varcos,
11 had concluded that the prints were unidentifiable, I desired
12 to call him because his name had been elicited and if I did
13 not call him it would leave the Government open to an attack
14 on closing argument why didn't the Government produce Sergeant
15 McDonald, the person who took the prints.

17 [766] Q Is that one fingerprint, sir, or more than one?

18 A Well, there is a partial here which is an
19 identifiable partial, and there is a partial on the
20 word S-t-e -- letters S-t-e which would be questionable
21 about for a positive identification to have the right
22 fingerprint itself. Then on Exhibit Defendants' H --

23 THE COURT: I thought that was H?

24 THE WITNESS: Well, they're both H.

25 H-524 and H-524. Oh. Case Number H-524. Defendants' G

1 [767] -- the letter G is here, this is also another
2 latent partial -- identifiable latent partial
3 from the battery also. This right here (indicating).
4

5 BY MR. DANIELS:

6 Q And do you have the third photograph? It
7 would be Defendants' I. Would you identify that, sir?

8 A The Defendants' I is what is referred to as
9 the plastic print. That is what was on the tape itself,
10 a piece of the tape, and this is the friction ridge area
11 here which is identifiable if you had the right portion
of the finger, right here, and down here also (indicating).

* * *

[762] In the rolling process,
5 normally in rolling prints you roll across the face of
6 it as such (indicating), and you pick up that area.
7 But as the latent partials that were on the plastic
8 print on the tape itself and the latent partials that
were on this battery were partials of fragmentated ridges

14

9 which appear only as the linings around to the rear part
10 of the finger and breaks up into a fragmentated ridge
11 area. And normally in rolling fingerprints, you do not
12 get this area. This has to be done by a major finger-
13 printing process in order to incorporate this part of
14 the finger and get the impression from there, and that
15 is the area that I determined that is on or was on this
16 tape and on the battery with fragmentary area friction
17 ridges dealing with the area as the lining around the
18 finger and begin to meet the skin area which is porous
19 and not ridges.

5 [784] THE COURT: All right. Were you the
6 one who made the request for further side prints?

7 THE WITNESS: Yes, sir. I did. I made
8 a request.
* * *

18 Q Are you aware that there was a court hearing
19 before Judge Clarie wherein he ordered additional
20 fingerprints?

21 A I am aware that there was an order given for
22 additional fingerprints, yes, sir.
* * *

2
3 [769] Q You would have it available, say, over the
4 noon hour or even to go out and get it now and roll the
5 fingerprints of Mr. Marrapese and Mr. Zinni?

6 A Absolutely.

7 MR. DANIELS: Your Honor, may we have
8 a recess so this can be done?

9 THE COURT: Yes. Is the car parked
near here?

* * *

8 [801] Q Mr. McDonald, you are eliminating Mr. Marrapese
9 and Mr. Zinni as having put any fingerprints on the bomb
10 device; is that correct?

11 A I do not find those four patterns I am looking
12 at on the exhibit belonging to Mr. Marrapese or Mr. Zinni.
13 I do not find them.

14 Q On the bomb device?

15 A Yes. I don't find them. No, sir.

16 Q But you have not as yet eliminated Joost and
17 Guillette or Sitko; is that a fair statement?

18 A That is a fair statement.

19 MR. ZINNI: I have no questions, Your Honor.
20 Thank you.

21 THE COURT: And why have you not eliminated
22 Guillette and Joost; because you didn't take the
23 side prints?

24 THE WITNESS: Yes, sir.

* * *

4 [200] Q Would you read this report, Mr. McDonald, in full?
5 Everything that is on there?

6 A Yes, I will.

7 Case Number IDB-72-0165-C. Sterling.

8 "Latent print examination. October 20, 1974. Re-
9 quested by U. S. District Court, Hartford, Connecticut,
10 Honorable T. Emmet Clarie, Chief Judge.

11 "Report to: Same as above.

12 "Problem: Latent print analysis.

13 "Major friction ridge area from David Guillette and
14 Robert Joost.

15 "Findings: The latent print partials from the
16 battery and friction tape were examined and compared with the
17 major friction areas of David Guillette and Robert Joost.
18 The latent print partials are not identified as belonging to
19 David Guillette or Robert Joost."

20 Signed James E. McDonald, Fingerprint Examiner.

* * *

10 [1610] A big point is made on cross examination.
11 It was brought out that the defendants' finger-
12 prints are not on the particular bomb, but that
13 fingerprint man was presented by the Government
14 and the Government has never contended that the
15 fingerprints of William Marrapese and Nicholas
16 Zinni were on that bomb. It would be very, very

strange if they were.

You will recall in the gun conversation, William Marrapese said "We'll get someone down there." It's not Nicholas Zinni and William Marrapese that had that expertise to produce that bomb. In fact, when William Marrapese said "We've got eight sticks." "We've got eight sticks.", these are the managerial aspects of the conspiracy particularly William Marrapese, the managerial

[1611] aspects. Not the blue collar worker, so to speak, who actually goes out and makes up the bomb.

* * *

[1605] But when you go into the jury room, you collectively have to try and remember all the facts and the overwhelming consideration which you have before you in the jury room is, first of all, did a man die? Secondly, he died because he was a witness. And third, there were only four people in the world who had a motive to prevent him from testifyin And when you consider that, you will reach the conclusion and be able to analyze all the other

[1606] little isolated instances which have been shown to you, and you will be able to understand why these particular incidents took place.

* * *

1 [162] Did you ask any of the people named in the report
2 filed by Mr. Smith to have their fingerprints taken?

3 A No.

4 Q Did you ask the Court --

5 A Well, let me withdraw that. Yes.

6 Q You did?

7 A Yes.

8 Q Other than the five mentioned?

9 A No.

10 Q All right. Other than the five mentioned, then,
11 you did not ask anybody else to have their fingerprints
12 taken?

13 A That's correct.

14 Q And did you seek any other avenue, or court order,
15 or what have you, to secure or procure the fingerprints of
16 these other individuals at anytime?

17 A No.

18 Q Did you conclude that nobody else had a motive?
19 In fact, you did so conclude, didn't you, in your summation
20 to the jury?

21 THE COURT: Which question do you want him to
22 answer, Counsel?

23 Q Didn't you conclude that nobody else had a motive
24 to kill Daniel LaFolla?

25 MR. LEVIN: Objection, your Honor.

1 [163] THE COURT: I'll allow it.
 2 Q Didn't you conclude that?
 3 A I concluded, Mr. Zinni --
 4 Q No. Please.
 5 Did you conclude that or didn't you, Mr. Coffey?
 6 A Yes, I concluded that.
 7 Q In fact, that's what you told the jury, isn't it?
 8 Nobody else in the world, to use your words, had a motive to
 9 kill Daniel LaPolla except these four men. Isn't that what
 10 you told them?
 11 A In sum and substance.

M.N.T. TR. 157 * * *

20 [157] Q Well, putting his report aside until he testifies
 21 to interpret what he means by identifiable, and using only
 22 Officer McDonald's report that the lift is identifiable,
 23 several of these prints are identifiable in nature, has any-
 24 one from the Government made any comparison of these 20 or
 25 so suspects or persons against whom LaPolla gave information
 [158] to the Government?

M.N.T. TR. 158

2 A Not that I know of.

M.N.T. TR. 12 * * *

4 [12] Q And who did you instruct to inspect the materials
 5 at the scene for fingerprinting purposes?

6 A Sergeant McDonald from the Connecticut State Police,
 7 Bureau of Identification.

8 Q Was Sergeant McDonald at that time working under
 9 your jurisdiction?

10 A No. We were working jointly.

20
MNT. TR. 108

12 [108]Q Now, you were aware, I take it, that there was a
13 joint investigation going on by the Federal Government and
14 the State Government, the State of Connecticut, with respect
15 to this entire matter. You were aware of that, were you not?

16 A Yes, I was.

17 Q And it's fair to say, is it not, that you, in fact,
18 did communicate with one Attorney Harry Goucher, who was the
19 State's Attorney for Putnam County or for Windham County?

20 A Yes, I did.

21 Q And was the State's Attorney in charge of this case?

22 A Yes, he was.

MNT. TR. 181 * * *

24 [181]Q And when did you make a written report as to your
25 conclusions?

MNT. TR. 182

1 [182]A I made a written report as to the conversation of
2 identifiable latent partials on the 3rd of October, 1972.

3 Q Did you say as to conversation?

4 A As to the conversation that occurred on the 29th
5 of September.

6 Q With whom?

7 A Major Ragazzi.

MNT. TR. 185 * * *

22 [185]Q Did you tell any ATF person at all that you had
23 found identifiable prints?

24 A Yes, I did.

25 Q And you simply don't know his name, is that the idea?

1 [186] A I don't know his name. I know the position that
2 he was in and where he was when I told it to him and showed
3 it to him.

4 Q Was that at the fire station?

5 A That was at the fire station.

6 Q And was that sometime between eight, nine, ten
7 o'clock in the evening; is that right?

8 A Yes, sir.

9 Q Now, you did say that you made up a report. Will
10 you tell us, please, when you made that report?

11 A The 3rd of October, 1972.

12 Q And where did you make it?

13 A I made it at the lab.

1 [221] Q Did you meet again -- maybe I didn't ask you. I
2 should ask you this:

3 Did any other agent, other than Mr. Varcos, Mr.
4 Weronik ask you anything at all about your findings and
5 conclusions between October 3rd of 1972 and June of 1974?

6 A Well, I've been asked about my findings, yes, sir,
7 when right from the very first day, the 29th, they were told
8 there was three identifiable latent partials. And how many
9 times we conversed about that, I can't recall specific dates.

10 Q No. I think you testified you told Mr. Weronik
11 that.

12 A Yes, I did.

13 Q And I don't know who else. I want to know if you

14 told anybody else that?

15 A Oh, yes, the Danielson Barracks personnel; Trooper
16 Veillette, Trooper Burke. They knew about it.

17 Q They knew about it. When did they know about it?

18 A - Well, right at the scene. It would have to be the
19 29th of September.

MNT. TR. 254

* * *

7 [254] Q And there were discussions with Agent Weronik con-
8 cerning the fact that you had found three identifiable par-
9 tial prints?

10 A That was a primary concern of all the conversations
11 I had with Agent Weronik.

12 THE COURT: No. The question was: And there
13 was conversation with this agent about the three
14 identifiable partial prints that you found?

15 THE WITNESS: Yes, sir, there was conversation.

16 THE COURT: Thank you.

17 Q (By Mr. Daniels) And did any of these conversations
18 take place before you went on vacation in November of '72?

19 A I say yes, they did. Yes.

20 Q Now, on September the 29th -- strike that.

21 In September and early October, 1972, when you felt
22 that you had found three identifiable partial prints on the
23 bomb device --

24 A I didn't feel it. I knew I found it.

25 Q You knew it. This to you was an important piece of

[255] evidence, isn't that right?

2 A Identifiable latent partials? Yes, sir.

3 Q This isn't something that you would hide or keep
4 from your superiors, is it?

5 A Absolutely not.

6 Q Is it something that you would keep from the U. S.
7 Attorney's office or any agent for the Federal Government?

8 A Under no circumstances.

9 Q And is it your testimony that you did reveal this
10 immediately to the agents and to your superiors?

11 A I revealed that on the night of Friday the 29th of
12 September at between eight and ten o'clock at night.

13 In thinking about the other agent there last night
14 as I left the court and not talking to anybody, the reason I
15 didn't mention who he was but it looked like him, I wasn't
16 positive but I'm pretty sure there was Agent Varcos that was
17 there that was sitting down as I was processing the battery.

18 I'm not positive, but it was a dark haired fellow
19 and he was sitting down alongside of me as I was kneeling
20 down on one knee processing on the table.

21 THE COURT: Are we talking about the evening
22 of the crime, September 29th?

23 THE WITNESS: Yes, sir, yes, sir.

MNT. TR. 16

11 [16] A When I stated that he gave me an oral report on
12 October 3rd, I am using the term very loosely. We had a
13 conversation about the subject matter.

MNT. TR. 17

24

16 [17] Q Did he tell you that the three prints in question
17 were identifiable?

18 A Not in those terms.

19 Q What terms did he use?

20 A That they looked good, that he thought he could do
21 something with them.

MNT. TR. 24

* * *

16 [24] Q Let's ask it this way, if we may, please:

17 Did Sergeant McDonald lead you to believe that he
18 had identifiable prints?

19 A Using the term "identifiable" in layman's terms,
20 as I understood them, the term to mean, he had something good
21 that he could work with.

22 Q All right. You mean to say to this Court that
23 Sergeant McDonald never said to you that those prints were
24 identifiable?

25 A Not using that exact terminology, no.

MNT. TR. 25

1 [25] Q But he did say that they were prints he could work
2 with?

3 A Yes.

MNT. TR. 18

* * *

2 [18] Q Did you make a report to Mr. Coffey?

3 A Yes.

4 Q Was it written or oral?

5 A I gave him a written report and I also gave him
6 numerous oral reports as the investigation progressed.

7 Q All right. When, if you did at all, advise Mr.

8 Coffey that -- strike that.

9 Did you advise Mr. Coffey at any time following
10 your conversation with Sergeant McDonald on October 3rd, 1972
11 that the fingerprints, to use your words, "looked good"?

12 THE COURT: To use his words?

13 MR. ZINNI: That's what he said.

14 THE COURT: That's what he said McDonald said.

15 MR. ZINNI: Yes. I'm sorry, your Honor.

16 THE COURT: I take it they are McDonald's
17 words, then?

18 MR. ZINNI: Yes, your Honor, McDonald's words.
19 I'm sorry. I apologize.

20 A I'm quite sure that I did mention that to Mr.
21 Coffey, as well as to everyone else involved in the case,
22 probably several times.

MNT. TR. 48

* * *

25 [47] Q All right. Did you bring to Mr. Coffey's attention,
MNT. R 48
[48] either orally or in written form, the matter of Sergeant

2 McDonald telling you, stating to you that the fingerprints
3 looked good, or words substantially to that effect, and Mr.
4 Varcos' conclusion that all prints were unidentifiable?

5 A Yes.

6 Q When did you bring that to his attention?

7 A It would be during October, the matter of McDonald's
8 saying that he thought they looked good.

9 Q This was in 1972?

10 A Yes.

* * *

26
MNT. TR. 75

3 [75] Q On September 20th you received your report?

4 A If I said September, I meant November 20th.

5 Q November 20th.

6 Did you recall Mr. Weronik telling you that on
7 October 3rd of 1972 Sergeant McDonald said he had prints
8 that looked good?

9 A I recall within a week, within that week period
10 after September 29th, Agent Weronik informing me that prints
11 had been found on the bomb.

12 Q And did he tell you that Sergeant McDonald said
13 they looked good?

14 A I recall Agent Weronik saying to me that they were
15 prints that Sergeant McDonald felt he could work with -
16 although I can't use the term "work with". I don't recall
17 his specific language.

18 But it was certainly words to the effect that he
19 could work with. And the suspects that we had identified,
20 we desired to have printed.

MNT. TR. 23 * * *

18 [23] A I contacted Sergeant McDonald between the 3rd and
19 the 12th of October several times - I don't have a notation on
20 these dates - during which time Sergeant McDonald was fur-
21 nished with fingerprint cards of the four Defendants in this
22 case that were on file with the ATF. And Sergeant McDonald
23 indicated that he had examined these fingerprint cards and
24 did not have sufficient detail on the fingertip impressions
25 to identify or to try to compare the latent print found on

[24] the destructive device.

2 And on October 12th, pursuant to court order, the
3 four Defendants and another individual were re-fingerprinted
4 at the Federal Building in Hartford to provide Sergeant
5 McDonald with more complete rolled impressions and palm
6 prints with which to try to make a comparison to the latent
7 prints.

* * *

MNT. TR. 192

2 [192] Q Can you tell us, please, when you saw Agent Weronik
3 at the lab?

4 A Well, it was sometime between October 3rd, and
5 sometime in the 20th of November. I don't know the specific
6 date.

* * *

14 Q You don't recall the date?

15 A It's sometime between October 3rd and November 20th,
16 as you mentioned.

MNT. TR. 193

* * *

7 [193] Q Did you have conversation with him with respect to
8 the fingerprinting at the Oneco site or of the Oneco bombing?

9 A Yes, I did.

10 Q And what did you tell him?

11 THE COURT: Are we talking now about a conver-
12 sation in the lab?

13 MR. ZINNI: Yes, your Honor.

14 THE COURT: Yes.

15 A Dealing specifically with the latent prints as
16 opposed to fingerprinting cards of knowns, it dealt with the

28
MNT. TR. ~~193~~ 193

17 fact that there were three identifiable latent partials,
18 that the fingerprinting cards were insufficient to make a
19 thorough comparison and examination.

20 Q No question in your mind that you told him that
21 they were identifiable, is that correct?

22 A I told him they were identifiable latent partials,
23 yes, sir.

24 Q How many?

25 A Three..

MNT. TR. 81 * * *

10- [81] A I asked Agent Weronik to get Sergeant McDonald's
11 results or conclusions. I can't state whether I used speci-
12 fic dichotomy "written report" as opposed to "oral report".
13 It was just to get his results, if he reached them.

14 Q Prior to November 20th of 1972, did Mr. Weronik
15 relate to you the results of Sergeant McDonald's findings?

16 A He related to me the results of conversations he
17 had with Sergeant McDonald.

MNT. TR. 88 * * *

23 [88] A Well, I know Agent Weronik told me that Sergeant
24 McDonald, when he had the prints, that is sometime in October,
25 felt that he might be able to make a positive comparison if

MNT. TR. 89.

[89] he had the proper prints from the suspects that we called
2 into the Grand Jury. I think that's the extent of the
3 quality of the prints that Sergeant McDonald had as it was
4 indicated to me.

* * *

MNT. TR. 84

29

3 [84] Q Mr. Coffey, I think you testified that you moved
4 in the United States District Court in Hartford before Mr.
5 Justice Clarie to have the fingerprints of the four or five
6 suspects taken --

7 A That's correct.

8 Q -- is that correct?

9 And do you remember when you did that?

10 A I believe it was October 12th.

11 Q And the order of the Court issued on October 12th,
12 did it not?

13 A Yes.

MNT. TR. 247

25 [247] Q Now, you say that Mr. Coffey knew at that time that

MNT. TR. 248

[248] you had three identifiable partial prints.

2 A Well, when we went into the room where he showed
3 me to look at them, I laid them right out on the desk.

4 Q This is October the 12th?

5 A October the 12th, 1972.

6 Q What did you tell Mr. Coffey at that time, if any-
7 thing?

8 A That these are the identifiable latent prints I'd
9 be working with.

10 Q And that immediately preceded your examination?

11 A Yes, sir.

12 Q And then occasionally leaving the room and reporting
13 your findings to Mr. Coffey?

MNT. Tr. 248

14 A Yes, sir.

15 Q This all took place on the same day, October the
16 12th?

17 A On October the 12th, 1972.

MNT. Tr. 257

* * *

5 [257] Q So when you came out of the room and you had these
6 conversations with Mr. Coffey in the presence of these other
7 individuals, whoever they may be and whatever they might
8 overhear, what they would overhear, if anything, would be the
9 result --

10 A That's right.

11 Q -- "Not yet"?

12 A That's right.

13 Q "Still working"; something like that?

14 A Yes.

15 Q At no time would you say, "I've got three partial
16 identifiable latent prints"?

17 A No, sir, I didn't say that.

18 Q Because this is something that you felt that Mr.
19 Coffey already knew from your conversations with him in the
20 room while you were looking at the prints?

21 A Yes, sir.

MNT. Tr. 245

* * *

3 [245] Q And you stated that after you made part of your
4 examination, you compared it with certain cards, you would
5 on occasion leave that room and then go out into the next
6 room?

7 A Yes, sir.

8 Q All right. Now, when you went out into the next
9 room, who was present from the prosecution, if anyone?

10 A Well, I saw Attorney Coffey on a couple of occa-
11 sions.

12 Q Anyone else?

13 A Mr. Weronik was there. Well, there were several
14 others around, but I didn't know who they were.

15 Q All right. Now, your function at that time was to
16 make a comparison and then to report your findings to some-
17 one, is that right?

18 A Yes, especially if I come up with a make.

19 Q All right. And this is the reason why you make a
20 comparison and then leave the room and then report to someone?

21 A Yes, sir.

22 Q Now, to whom would you report each time you left
23 the room?

24 A I would report to Attorney Coffey.

25 Q Now, when you talked to Mr. Coffey, did you report

MNT. Fr. 246

[246] to him that you had three identifiable partial prints and
2 that a certain card did or did not compare?

3 A Well, he knew I had three identifiable --

4 Q No. In your conversations with Mr. Coffey --

5 A The only thing I would say to him: "Not yet. I've
6 got to look more. Not yet."

MNT. F. 388.

1 [388]Q So that you didn't discuss at all with Officer
2 McDonald on October the 12th, 1972 what he was doing and how
3 he was making out with his dual purpose of comparison?

4 A I asked him how he was making out with the prints,
5 yes.

6 Q What did he tell you?

7 A He said things are going fine.

MNT. F. 389

1 [389]Q (By Mr. Daniels) Then he didn't need additional
2 prints by court order, is that what that meant to you?

3 A Yes.

4 Q All right. Then when he said everything is going
5 fine, this indicated to you that he had prints that he was
6 working with that were sufficient for comparison purposes?

7 A That's what I took --

8 Q That includes the fingerprint sample cards which
9 have just been ordered and taken, as well as the lift from
10 the bomb?

11 A That's what I took it to mean.

12 MR. DANIELS: Fine. Nothing further.

MNT. F. 284

16 [284]Q Mr. Varcos, what was the conversation that you
17 had with Mr. McDonald?

18 A Mr. McDonald told me that he had a latent print
19 that was identifiable and also told me what part of the
20 hands he wanted me to -- what kind of prints he wanted me to
21 take.

22 Q And did he tell you he had just one or more latent

23 prints?

24 A Only one, to my knowledge. He had one with him,
25 a photograph of one.

MNT. F. 294 * * *

17 [294] Q (By Mr. Zinni) And at that time, you didn't talk
18 at all about -- didn't find out anything at all about what he
19 found at the bombing scene?

20 THE COURT: He said he had a latent print.

21 A He showed it to me.

22 THE COURT: He showed it to him.

MNT. F. 62 * * *

3 [62] A He stated that he wasn't satisfied with the way
4 Varcos rolled the prints. On one occasion, he told me that.

5 Q Did you ask Mr. Coffey to request the Court to have
6 the Defendants give further samples of their prints?

7 A I can't specifically say. It may very well have
8 been discussed.

9 Q Well, this was important, was it not, to determine
10 the identity of the lift and the person whose print was
11 obviously on that bomb?

12 A After Agent Varcos made his --

13 Q Was it important at that time?

14 A Yes.

MNT. F. 33 * * *

2 [33] Q And you conferred with him on what day, October
3 what?

4 A 25th.

5 Q And what was the substance of your conversation?

34
MNT. F. 33

6 A Well, Sergeant McDonald had had the latent finger-
7 prints all through the month of October and I had been con-
8 tacting him almost daily to find out how he was progressing
9 with his work. Naturally, this was a very important piece of
10 evidence, a latent fingerprint, as far as trying to indentify
11 the perpetrators.

12 And we had most of our agents more or less waiting
13 around as to what his answer would be.

MNT. F. 34 * * *

4 [34] A Yes. I had a conference on November 8th with both
5 Varcos and McDonald - and this is again telephone conversations
6 - at which time it was decided that Varcos and McDonald would
7 sit down together and work on these latent fingerprints and
8 try to come up with an answer: Either it belonged to some-
9 body or it didn't.

* * *
21 Q When and where?

22 A They were to get together on November 13th, again
23 that's 1972, at Bethany, and we had hoped that they would sit
24 down together, being the Federal expert and the State expert,
25 and together would come up with an answer for us.

MNT. F. 127 * * *

13 [127] Q Now, an important piece of evidence in this case
14 would have been the identity of the person who placed the
15 print or prints on the bomb device, isn't that right?

16 A Theoretically, yes.

17 Q Theoretically. As a matter of fact, two experts
18 were used by the Government to attempt to identify the suspect

19 or suspects in this regard, isn't that right?

20 A That's correct.

21 Q Was there any more than two, or was it just McDonald
22 and then Varcos?

23 A To my knowledge, with respect to fingerprinting, it
24 was only Mr. McDonald, or Sergeant McDonald, and Agent Varcos.

MNT-F 154 * * *

20 [154] Q Well, anyway, let me ask you this: Certainly
21 whether or not the fingerprints were identifiable was impor-
22 tant to the defense's case. You knew that, didn't you?

23 A Yes, it was important to both sides.

MNT-F 206 * * *

1 [206] Q Do you know whether or not Mr. Varcos went to the
2 State laboratory to do some work on this fingerprinting case?

3 A Yes, I do.

4 Q And when he went, were you present?

5 A To my knowledge, I don't recall ever meeting Mr.
6 Varcos at the lab.

7 Q And did you leave any instructions for him?

8 A Specifically I would have taken the file and --

9 THE COURT: No.

10 The question was did you leave any instructions
11 for him.

12 A Yes, I apparently did. I don't recall exactly,
13 but procedure I know I would have done --

14 THE COURT: No. The question was not what
15 the procedure was, but did you in fact leave in-

36
MNT. F. 206

16 instructions for him.

17 THE WITNESS: I must have, yes, sir.

18 Q (By Mr. Zinni) All right. Do you recall what
19 those instructions were?

20 A Here's the file; help yourself.

21 Q That's what you told him?

22 THE COURT: No. He said he left those in-
23 structions: Namely, "Here's the file, help your-
24 self".

25 Isn't that it?

MNT. F. 207

1 [207] THE WITNESS: That would be it, yes, sir.

2 Q (By Mr. Zinni) Now I ask you whether or not in
3 your file was there Exhibit A, or your report of October 3rd,
4 1972?

5 A Yes, sir, it would have to be in the file.

6 THE COURT: No. The question is was it there
7 in the file.

8 THE WITNESS: Sure it would be, yes, sir.

MNT. F. 288 * * *

6 [288] Q Between October 12th of '72 and November 13th of
7 '72, had you been in contact with either Mr. Coffey or Agent
8 Weronik or Agent Petrella?

9 A Agent Weronik.

10 Q And did you have some telephone conversation with
11 him?

12 A Yes, sir.

13 Q And can you tell us between that period how often
14 you talked with him?

15 A I believe it was on two occasions.

16 Q And where were you at the time that this discussion
17 took place?

18 A New York.

19 Q Was this by telephone?

20 A Yes.

21 Q Can you tell the Court, please, what he said and
22 what you said?

23 A The first time was the latter part of October and
24 he had told me they were having some problem with the prints
25 as far as getting a determination, and that he may request

MNT. T. 289

[289] my assistance.

2 The next time was, I believe, around the 8th of
3 November, when he asked me if I would come up to Connecticut
4 and look over the latent prints that Sergeant McDonald had,
5 and a joint meeting was set up for November the 13th where
6 myself and Sergeant McDonald would examine the evidence to-
7 gether.

8 Q There's no question, sir, that on those two telephone
9 conversations you had with Agent Weronik, that you were aware
10 that there were latent partial identifiable prints, at least
11 as far as Sergeant McDonald or Lieutenant McDonald was con-

MNT. #. 289

38

12 cerned?

13 A Well, Sergeant McDonald said that he had them.

14 Q Yes.

15 A Yes.

MNT. #. 37

* * *

4 [37] Q All right. Did you ever tell -- between October
5 12th and November 8th of 1972, did you tell Mr. Varcos that
6 Mr. McDonald had said that the fingerprints looked good?

7 A I would say I would have, yes.

MNT. #125

22 [125] Q Now, prior to the trial of the first -- of any of
23 the Defendants in this case - Guillette and Joost, Marrapese
24 or Zinni - the defense filed motions for discovery, did they
25 not?

MNT. #. 126.

* * *

1 [126] A Yes, they did.

2 Q On behalf of all Defendants?

3 A Yes, they did.

4 Q They also filed motions for any exculpatory evidence
5 or so called Brady material, did they not?

6 A Yes, they did.

7 Q And the motions for the discovery were filed under
8 Rule 16 of the Federal Rules of Criminal Procedure?

9 A Partially.

10 Q And they made specific request, did they not, for
11 the results of reports of physical or mental examinations
12 and of scientific tests of experiments in any connection
13 with the particular case, or copies thereof within the

14 possession, custody and control of the Government, the
15 existence of which is known or by the exercise of diligence
16 may come known to the attorney for the Government?

17 A I would say motions were filed to that effect.

MNT. F. 128 * * *

[128] "scientific report" pursuant to Rule 16 refers, among other
2 things, to reports with the results of fingerprint examinations?

3 A Yes, I would consider that part of Rule 16.

* * *

12 Q All right. Now, did you personally exercise any
13 due diligence in any way, shape or form to determine from
14 Officer McDonald of the Connecticut State Police whether, in
15 fact, he had ever prepared a report, when you first received
16 these discovery motions?

17 A No, I never communicated with Sergeant McDonald.

MNT. F. 131 * * *

3 [131] Q But at that time, did you make any inquiry of
4 Petrella whether he obtained any report or attempted to ob-
5 tain any report for the defense from Officer McDonald?

6 A No, I had no reason to believe that there was such
7 a report.

8 Q And because of your lack of any reason to believe,
9 you didn't tell Petrella to contact McDonald to see if he had
10 made a report; is that right?

11 A That's correct.

12 Q You didn't contact any of the assistants working
13 with you at that time to tell any of them to contact McDonald

40

MNT-F. 131

14 to see if he had made a report, is that right?

15 A Yes, that's correct.

16 Q And you didn't contact McDonald yourself to see if
17 he had made a report?

18 A No. I worked only through Agent Weronik and he,
19 in turn, was directed to work through the agents in charge of
20 the State case, which would be Burke and Veillette.

MNT-F. 92 * * *

2 [92] Q Did you ever write to Sergeant McDonald or the
3 State Police in Connecticut to obtain any reports that they
4 might have or did have with respect to the fingerprinting in
5 this case?

6 A No, I did not.

7 Q Did you dispense anyone to the office of Sergeant
8 McDonald to obtain a written report from the State Police or
9 Sergeant McDonald?

10 A No.

MNT-F. 130 * * *

18 [130] Q All right. You also furnished to the defense the
19 report of Agent Varcos to the effect that the prints were
20 unidentifiable - the prints from the lift?

21 A Yes, that's correct.

MNT-F. 148 * * *

1 [148] Q And was it copies of that document, that is Exhibit
2 C for identification, which you gave to the defense team?

3 A Exhibit C I sent to the defense team. The disclo-
4 sure of the physical items upon which that report arose I
5 gave to Mr. Santos.

* * *

41
MNT. #. 335

10 [335] Q (By Mr. Daniels) Now, prior to this date of
11 October the 3rd, 1973, had you received the report of Officer
12 Varcos, the fingerprint expert, stating that the lifts from
13 the bomb device in his opinion were unidentifiable?

14 A Yes, sir.

15 Q And were you relying on this opinion in your pre-
16 paration for trial?

17 A Yes, sir.

MNT. Tr 215 . . .

18 [215] And I didn't send them at his request and I
19 wouldn't, unless I got a court order from the State's
20 Attorney's office or Federal Attorney's to send it to him.

21 Q But you would give it to the United States Attor-
22 ney if they asked for it, wouldn't you?

23 A Yes, I would. Here's the file, have anything you
24 want.

MNT. #. 331 . . .

24 [331] A I called Sergeant McDonald in an attempt to secure
25 copies of the latent prints found at Oneco and a copy of the

MNT. #. 332

[332] fingerprint card of the decedent, Mr. LaPolla. I called
2 Sergeant McDonald at the suggestion of Agent Weronik and Mr.
3 Coffey.

4 I asked Mr. McDonald if he could supply the latent
5 prints found at Oneco and the card of the decedent. He in-
6 dicated to me that he would have to check with Mr. Coffey.
7 And I said I understood this.

. . .

24 Q At anytime during this telephone conversation, did
 25 Sergeant McDonald tell you that he had, in his opinion,

MNT. F. 333

[333] identifiable latent partial prints --

2 A No, sir.

3 Q -- found from the bomb device?

4 A No, sir.

MNT. F. 358 * * *

15 [358] Q (By Mr. Coffey) Now, I understand your testimony
 16 to be that Sergeant McDonald did not tell you that the prints
 17 were identifiable?

18 A That's correct. The latent prints.

19 Q Do you recall -- you're quite sure about that?

20 A I do recall -- I'm quite sure he told me --

21 THE COURT: The question is are you quite sure
 22 that he didn't tell you.

23 THE WITNESS: That's correct. I am.

MNT. F. 335 . . .

18 [335] Q At anytime prior to trial or prior to the comple-
 19 tion of the trial, were you aware that Sergeant McDonald had
 20 formed the opinion that the latent prints -- strike that --
 21 formed the opinion that there were three identifiable par-
 22 tial latent prints from the bomb device?

23 A No, sir.

24 Q When were you first made aware of this?

25 A At the conclusion of the Marrapese and Zinni trial,

43
MNT. F. 336

[336] Mr. Coffey visited me at the Public Defender's office in
2 Hartford and delivered the October 3rd, 1972 report of
3 Sergeant McDonald. That was the first notice I received
4 that there was an opinion outstanding that the prints found
5 at Oneco were identifiable - at least some of the prints.

* * *

16 THE COURT: You said you heard of the McDonald
17 report dated October 3, '72 when Mr. Coffey handed
18 it to you after the trial ended that involved only
19 Marrapese and Zinni?

20 THE WITNESS: That's correct.

21 THE COURT: And that was about when?

22 THE WITNESS: That, I believe, was in June of
23 this year.

MNT. F. 353 * * *

11 [353] Q All right. And would it be fair to say that you
12 were, on often occasions, the first individual who had
13 access to the physical discovery or the discovery of physical
14 items possessed by the Government?

15 A Yes.

16 Q And with respect to those items of importance that
17 you felt in the case that were disclosed to you, was it your
18 custom in this case to relay anything you felt was of impor-
19 tance to the other attorneys in the case?

20 A I did not relay information regarding physical
21 evidence to Mr. O'Neill and Mr. Bucci generally, but solely

22 to Mr. Wade.

23 There came a point when the interests of Mr.
24 Guillette parted from -- apparently parted from the interests
25 of Mr. Marrapese and Mr. Zinni.

MNT-F-354

1 [354] Q When was that?

2 A I believe sometime in late September, Mr. Zinni
3 could not be located and there was a concern on my part that
4 he might be informing against the other co-Defendants.

5 Q But this did not relate, this apparent difference
6 of opinion or difference in approach to how the case would
7 be defended did not relate to physical evidence in the case
8 and what happened at Oneco on September 29th, 1972, did it?

9 A Well, it did, because at a certain point, I simply
10 worked on the case with Mr. Wade with regard to the physical
11 evidence that went to the prior similar act, the Noble Met
12 incident. We really had no reason to be in constant contact
13 regarding the physical evidence with Mr. Bucci and Mr. O'Neill.

14 Q Isn't it a fact that, in general terms, you repre-
15 sented that you were the attorney who was to be the co-ordinator
16 and recipient of physical evidence disclosed by the Government
17 if it was to be given to one attorney because it was only
18 in one form?

19 A I do not remember ever doing that. I did receive
20 a lot of the physical evidence. I know that Mr. Wade
21 examined all the same physical evidence I did.

22 It was made available by you, displayed to all of

23 us, and there were a number of exhibits because of the prior
24 act. But I was not --

25 THE COURT: Are you denying that you made a
MNT. F. 355

1 [355] representation that you would co-ordinate the
2 physical evidence?

3 THE WITNESS: Yes, your Honor. My obligation
4 with Mr. --

5 THE COURT: No. That answers the question.

6 THE WITNESS: That's correct. I made no re-
7 presentation to anyone about that.

8 Q (By Mr. Coffey) Are you sure?

9 A Yes.

MNT. I. 356 . . .

13 [356] THE WITNESS: Yes. I was not the co-ordinator
14 of the physical evidence. I was not the recipient
15 of the physical evidence for the other four Defen-
16 dants.

17 I was working primarily on an attempt to
18 exclude the prior similar act, the Noble Met inci-
19 dent which Mr. Coffey was attempting to introduce
20 into the case. As a result, I viewed the physical
21 evidence on a number of occasions. So did Mr. Wade.
22 I believe -- I don't know whether Mr. Buccì or
23 Mr. O'Neill viewed the physical evidence of the
24 Noble Met incident, but I was not the co-ordinator
25 of the physical evidence or the recipient of the

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MNT. # 357

1 [357] physical evidence for the other three defense
2 counsel.

3 I did work closely on the fingerprints with
4 Mr. Wade, but not with the other two defense
5 counsel.

MNT. # 358 * * *

7 [358] Q Yes. And when you received those items, in effect,
8 isn't it fair to say, since you were receiving the sole form
9 that it could be given to the defense team, that you accepted
10 them on behalf of the defense team?

11 A I did not.

MNT. # 337 * * *

24 [337] Q At some time during the preparation -- strike that.

25 At some time, did you receive a list of named persons?

MNT. # 338

[338] from Officer Smith against whom Daniel LaPolla had given
2 information concerning these persons' criminal activities
3 within the State of Rhode Island?

4 MR. COFFEY: Objection, your Honor; relevancy.
5 Particularly with respect to these Defendants on
6 trial, or who were on trial in June.

7 THE COURT: Well, Mr. Santos said he had an
8 abiding interest in all four Defendants' innocence.
9 I think it's relevant here.

10 A Yes, I did receive such a list.

11 Q And approximately how many names of persons were
12 there?

13 A My recollection is there were eight to twelve

14 persons in reports filed by Special Agent William Smith
15 against whom Mr. LaPolla had supplied information to Mr.
16 Smith.

MNT. F. 334

* * *

16 [334] THE COURT: What would he have done, you
17 asked him, had he known that Sergeant McDonald had
18 three identifiable latent prints.

19 Q (By Mr. Daniels) In preparation for the forth-
20 coming trial.

21 A Had I been aware of this fact, I would have sub-
22 mitted to as many fingerprint experts in Connecticut and the
23 country that we could find the latent prints at Oneco and
24 the fingerprint cards of the four co-Defendants to as many
25 experts as possible, in an attempt to secure an opinion that

MNT. F. 335

[335] the identifiable prints found at Oneco did not match the
2 prints of any of the four co-Defendants on trial. And I --

3 THE COURT: And you were concerned about the
4 other three also?

5 THE WITNESS: Yes, your Honor. - Simply --

6 THE COURT: No.

7 THE WITNESS: Yes, I was most concerned. Most
8 concerned.

9 THE COURT: Thank you.

* * *

MNT. F. 155

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14 [155] Q Now, during the course of the trial of Joost and
15 Guillette, was there a motion made to produce the names of a
16 number of people that LaPolla had given information about?

17 MR. LEVIN: Objection, your Honor.

18 I don't understand this was covered on my
19 Cross examination. I don't want to be too picky,
20 I don't know what the Court's position is --

21 THE COURT: Well, it wasn't covered. I'll wait
22 a while to see how relevant it's going to be.

23 A Yes, a motion was made.

24 Q And pursuant to the motion by the defense, did
25

MNT. F. 156

[156] Officer Smith, as an agent of the Government, furnish the
2 defense a list of some 20 or 30 names of persons that Daniel
3 LaPolla had given information about, criminal activities,
4 to the Federal Government?

5 MR. LEVIN: Your Honor, I'm going to object
6 on the ground of relevancy to this inquiry.

7 THE COURT: Well, I assume counsel is going to
8 represent that they are relevant. I'll wait.

9 A I wouldn't want to be held to the number of names,
10 but he did supply a number of names.

* * *

11 [313] Q And the undersigned is one person; yourself?

12 A Yes, sir.

13 Q Now, directly above that sentence where it says,
14 "It is also the opinion of the undersigned that the latent
15 print in question is, in fact, a combination of ridges from
16 two separate areas of the fingers and/or palms", the first
17 part of that same paragraph states, Paragraph 2:

18 "Exhibits 4 and 6 were determined to be the same
19 latent print and upon re-examination it was determined that
20 there was a sufficient number of characteristics appearing
21 on the latent print to make an identification possible".

22 Is that correct?

23 A That's right.

24 Q And it's immediately following that where it states:
25 "It is also the opinion of the undersigned". Is that correct?

MNT. # 314

1 [314] A That's right, sir.

2 Q Now, the word "also" in that context referring to
3 the undersigned, meaning yourself, indicates, does it not,
4 that the preceding statement and opinion before "It is also
5 the undersigned" is also your opinion, isn't that right?

6 A The way it's worded here, it is, sir. But I had
7 explained that what the meaning wasn't the same as the
8 actual wording. This was a joint meeting.

MNT. # 89

16 [89] Q Did you direct Agent Weronik to deliver the prints
17 of the cards to Sergeant McDonald?

18 A Yes.

* * *

1 from your investigation and conversation with your aides
2 or agents that the prints in question were identifiable?
3 Was that your impression?

4 A I had no knowledge or impression as to whether
5 they were identifiable or not as of that time.

6 Q No. May I ask it again in another way, perhaps.

7 After your conversation, investigation, consulta-
8 tion with Agent Weronik, Agent Petrella, or whoever, Sergeant
9 McDonald, if you did talk with him at anytime, did you con-
10 clude within your own mind, were you impressed that these
11 prints were identifiable?

12 MR. LEVIN: Your Honor, I think that should
13 be fixed at some point in time.

14 MR. ZINNI: I did. The first week

15 THE COURT: The first week in?

16 MR. ZINNI: After September 29th.

17 A No, I reached no such conclusion.

18 Q Were you advised that there were latent prints in
19 that first week that could possibly identified? Were you
20 advised to that extent?

21 A I can't answer that question in the form in which
22 you ask it, Mr. Zinni.

23 Q Why not?

24 A Well, to begin with, you asked me if I was advised
25 about latent prints. At that time, I didn't know what a

1 latent print was as opposed to a positive print.

2 I was advised that there were prints, that we
3 would be best advised to immediately fingerprint the suspects
4 whom we thought might have committed the offense. And that
5 is the sum and substance of what I was advised.

6 Q How long have you been a prosecutor, sir?

7 A Four years.

8 Q Prior to October, 1972, how long were you a prose-
9 cutor?

10 A I started with the Department of Justice in October
11 of 1970.

12 Q And between October of 1970 and October of 1972,
13 is it your testimony that you didn't know what a latent print
14 was?

15 A As opposed to a positive print, that's correct,
16 sir.

17 Q Do you now know?

18 A I'm not sure, but I think I do.

19 Q When you didn't know what latent print meant, did
20 you attempt to find out?

21 MR. LEVIN: Objection, your Honor.

22 THE COURT: Counsel, I think really we're
23 wasting time.

24 MR. ZIMMI: You think we're wasting time,
25 your Honor?

1 THE COURT: Yes, in examining the man as to
2 what he found out, if he did, what a latent print
3 meant.

4 MR. ZINNI: That goes to whether or not --
5 there's a lot of attorneys, including myself, that
6 don't know a lot of things, but isn't it negligent
7 for him not to go and find out?

8 THE COURT: Well, let's assume it's gross
9 negligence. Now, what is the point?

10 MR. ZINNI: It's part of the thrust of this
11 case.

12 THE COURT: What's the thrust?

13 MR. ZINNI: If indeed the United States
14 Attorney was negligent or deliberately, but in
15 this instant negligent in not finding out or not
16 producing and using every diligent effort to find
17 exculpatory evidence, then indeed it is a negligent
18 act.

19 MR. LEVIN: Your Honor --

20 THE COURT: The next question, please.

21 BY MR. ZINNI:

22 Q Well, Mr. Coffey, did you sometime find out what
23 a latent print was?

24 MR. LEVIN: Objection.

25 THE COURT: He said he doesn't even know now

1 whether he knows what it is as compared to a
2 positive print.

3 MR. ZINNI: I didn't understand that. But
4 I'll take the Court's --

5 THE COURT: He's right here. We'll ask him.
6 Is that true?

7 THE WITNESS: Your Honor, when Mr. McDonald
8 was here in the June trial, he described to me the
9 difference between an invisible print, a visible
10 print, a print that can be photographed and a print
11 that has to be lifted and then the negative de-
12 veloped; all of which was new to me.

13 Q All right. So in June of '74, you didn't know
14 what latent or patent print was, is that right?

15 A It would be fair to say --

16 THE COURT: I don't think he used the word
17 "patent", though.

18 MR. ZINNI: No. I used it. He said "positive".
19 Latent or positive print.

20 MR. LEVIN: Your Honor, I believe he's
21 answered that question on a couple of occasions
22 already.

23 A It would be fair to say, sir, that prior to talking
24 to Sergeant McDonald if you asked me to describe one type of
25 print as opposed to another type of print, I don't think I

1 could have done it accurately.

2 Q Thank you. You received -- incidentally, were the
3 words "latent print" used by Mr. Weronik or Mr. Petrella in
4 their report to you?

5 A They may have been.

6 Q And at that time, did you ask Mr. Weronik or Mr.
7 Petrella to seek out a report from Sergeant McDonald?

8 A Yes, I believe I did.

9 Q Did you ask for a written report?

10 A To the best of my knowledge, Mr. Zinni, I asked
11 Agent Weronik to get results from Sergeant McDonald as quick
12 as possible.

13 Q And did you ask Mr. Weronik after that first week,
14 at anytime between then and December 31st -- strike that.

15 Between that first week of October of 1972 and
16 November 20th of 1972, did you ask for Sergeant McDonald's
17 report, written report?

18 A I had no knowledge he had such a report.

19 Q Did you ask -- well, strike that.

20 You do know that he did some investigative work on
21 the fingerprints, don't you?

22 A That's correct.

23 Q You do know that the identification -- strike that.

24 You do know that print cards did go to the labora-
25 tory in Bethany?

A That's right.

Q That's what you said that Marrapese overheard?

A That's right.

Q All right. And that's the only thing that you can remember that was said in the presence of any Defendant concerning the fingerprints?

A That's right.

Q All right. Now, when Mr. Santos called you the first part of October, 1973, he told you that he was a defense attorney, did he not?

A Whether he told me or not, I got the impression he was; so he probably told me and that's how I got the impression he was a defense attorney.

Q And up to that point, you had been attempting to keep your reports and your results somewhat confidential, had you not?

THE WITNESS: Well, your Honor, might I explain our reporting system to clarify this?

THE COURT: Well, you might if the lawyer says yes. But if the lawyer says no, you can't.

A Might I explain it to clarify?

Q Yes, certainly.

A Dealing specifically with latent print work, I come into the lab in 1961 and since that until I became the Commander, I had six commanders. The policy always was, on

1 latent prints, when you get latent prints, you accept them -
2 you're called by phone - if they're good usable or not good
3 usable, and you tell the unit submitting them this is the
4 way it is. You never wrote a report, you never sent a re-
5 port. You told it by phone.

6 The policy, of course, was wrong. And I had six
7 commanders that way. The only time you sent a report and
8 the only time you took out a case number was when you made
9 an identification comparing a latent with a known rolled
10 impression. Then you took out a case number, then you sent
11 out a report. And it may have taken one day, it may have
12 taken a year, a year and a half. In between, you examined
13 hundreds of cards or might examine one for each case.

14 Now, in January of 1974, I became the Commander
15 of the crime lab. At that time, the first thing I did was
16 to go down into the fingerprint section and I said no matter
17 what type of fingerprint work comes in here, whether you
18 make an I.D. or whether you don't make an I.D., you immediately
19 take out a case number, and when you're finished with your
20 determination, you write a report, one sheet at least; send
21 one to the unit and put one in the jacket.

22 I did that - for this kind of a reason that we
23 have today. And I was following a policy, and I'm not about
24 to argue with the boss. We're semi-military organization;
25 I'm going to respect his decision. This is the way you

1 want it? This is the way we operate.

2 But when I became the Commander, I changed that.

3 Q All right. Now, Mr. McDonald, the policy that
4 you were following back in October of '73 -- October, '72,
5 October, '73 was to reveal your results?

6 A That's right. By phone.

7 Q To other law enforcement officers?

8 A Absolutely.

9 Q Right. And to your boss and to the U. S. Attorney,
10 or anyone in law enforcement?

11 A That's right.

12 Q But as far as the defense were concerned, it was
13 also your policy, was it not, to maintain some confidential-
14 ity concerning your reports?

15 A No, sir. No way.

16 Q You did tell me that you'd have to get a court
17 order for defense attorney?

18 A To give materials, to give evidence, to give copies
19 of photographs. There is a procedure that they have to
20 follow. If they called headquarters and went through the
21 general office, then a written order would come down for me
22 that you will comply because they pay the fee for the photo-
23 graphing and processing to be done.

24 This was not done in that case.

25 Q If a defense attorney called you on an important

McDonald, and there were several other people there who --

Q The Jim McDonald you referred to was the previous witness, former Lieutenant McDonald of the State Police?

A Yes, sir, Connecticut State Police.

Q When you first got to the courthouse, did you have a conversation with someone?

A Mr. Coffey told me why I was there.

Q What did he tell you?

A That I was there in order to fingerprint some people who they were getting -- they were in the Grand Jury to get an order for them to be fingerprinted. And then I spoke to Mr. McDonald.

Q When you spoke with Mr. McDonald, did you do so in the presence of Mr. Coffey?

A At one time, I did. But I don't remember if it was the original conversation I had with him.

Q Well, at some time, did Mr. McDonald tell you that he had three partial, latent partial prints that were identifiable?

MR. COFFEY: Objection. Your Honor, he's leading his own witness.

THE COURT: Yes, indeed he is.

MR. ZINNI: Well, I thought your Honor had ruled in the beginning that, after my argument or short argument, that by the very nature of things

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these witnesses are Government witnesses.

THE COURT: Yes, I know. But the man has never testified, to my knowledge, in this case and I can't tell from where I sit that he's that hostile.

MR. ZINNI: Well, isn't the whole nature of this proceeding rather hostile in nature?

THE COURT: I'd hate to tell you in my own words what I think the nature of this proceeding is. It would come back to haunt someplace.

MR. ZINNI: I'm sorry. I don't know what the Court means by that.

THE COURT: Well, I'm afraid you're just going to have to guess because I restrain myself.

BY MR. ZINNI:

Q Mr. Varcos, what was the conversation that you had with Mr. McDonald?

A Mr. McDonald told me that he had a latent print that was identifiable and also told me what part of the hands he wanted me to -- what kind of prints he wanted me to take.

Q And did he tell you he had just one or more latent prints?

A Only one, to my knowledge. He had one with him, a photograph of one.

60?
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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

VS. :

NICHOLAS D. ZIRNI :

H-524

DEFENDANT'S MOTION FOR A NEW TRIAL

BASED ON:

- 1) NEWLY DISCOVERED EVIDENCE, and
- 2) PROSECUTION'S SUPPRESSION OF MATERIAL EVIDENCE

1. Pursuant to defendant's pre-trial motion for all scientific reports, the Government disclosed a latent fingerprint analysis report signed by Anthony Varcoe, Special Agent. In that report, Varcoe stated that certain latent prints found on the sticky side of black electrical tape on the dynamite bomb at Oneco were compared with the prints of the four co-defendants and Edward Sithe. The report further stated that all attempts to match the prints with those of the suspects proved negative. However, the report goes on to note:

"It is the opinion of the undersigned that the latent prints in question are unidentifiable due to the lack of sufficient ridge detail and identifiable characteristics." (Exhibit A)

In light of this opinion, the appellants did not call Mr. Varcoe as a witness at trial.

2. On or about June 27, 1974, counsel for Defendant, Marnspace, through the offices of the Federal Public Defender, saw

a report wherein the Government disclosed a new fingerprint report dated June 17, 1974. In this report, Mr. Varcoe states that one of the latent prints had "a sufficient number of characteristics appearing on the latent print to make identification possible." Varcoe stated that this print and others "were examined and compared with the known fingerprints and palm prints of suspects submitted with negative results."

3. On approximately June 17, 1974, the Government disclosed a fingerprint report by Sgt. James E. McDonald of the Connecticut State Police. The report is dated October 3, 1972, and states the following:

FINDINGS:

Three identifiable partial latents were processed from Q-1 (Ray-O-Vac battery). Two partials are identifiable to the area of the friction ridge pattern on the extreme sides of the fingers, and one could be palm area.

COMMENTS:

The latent partials will be kept on file for examination with the described friction ridge area when submitted when suspects are fingerprinted. It is requested that 'Major' printing be done, as the needed partials area is not normally printed when a suspect is being fingerprinted. (Exhibit C)

4. On October 12, 1972, the four co-defendants and Edward Sithe were subpoenaed by a federal grand jury and ordered to submit to 'Major' printing by the Honorable T. Ewart Claris. Prints of the sides of the fingers and palms were taken.

5. At the trial of Co-defendants Marrapese and Zinni, Sgt. McDonald testified that the prints found at Oneco were identifiable but that he was never given sufficient samples of the fingerprints of the four co-defendants to make an identification. When this information was disclosed, co-defendants Marrapese and Zinni voluntarily submitted to additional printing. McDonald

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then testified that their prints did not match the prints found at Oneco. (Exhibit D)

6. It is significant that defendant Zinni still has not been furnished with the supplemental report.

7. It is further significant that although there were identifiable prints in the possession of Sgt. McDonald and he had sample 'Major' prints of the four defendants none of the defendants have ever been furnished with any comparison made by Sgt. McDonald of the prints found on the batteries and the major prints.

8. There can be no dispute that the Varese and McDonald reports constitute Brady material and newly discovered evidence. As the Court knows, counsel for the defendants have contended that the evidence is insufficient to sustain the jury finding that the defendants caused the death of LaFolla. This Court has rejected that contention. However, if this Court is correct, the evidence is only sufficient to support a finding that one of more of the four co-defendants planted the bomb at Oneco. There was no evidence of agency on this point.

Therefore, if a fingerprint was found on the Ray-O-Vac battery at Oneco which does not match the prints of any of the co-defendants, this information by itself would cause a jury to find the defendants not guilty, for the jury in this case could very well have assumed that the fingerprints on the Oneco bomb were Joest's and Guilletto's.

9. The report of Sgt. McDonald asking for major prints was requested on October 3, 1972, Paul Coffey, Special United States Attorney, on or about October 12, 1972, caused subpoenas to issue for the four defendants and Edward Sitko, requesting their

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appearance before a Grand Jury looking into the Oneco incident. On the 12th of October, 1972, Judge Clarie ordered the five individuals to give the so-called major prints. Therefore, it is logical to assume that as early as October 3rd or 4th, 1972, Mr. Coffey knew of the existence of identifiable prints which would exculpate all of the defendants. Yet the only reports furnished to defendants Jesst, Guillatto, Marrese and Zinni was Varcoe's report indicating that the fingerprints were unidentifiable. The defendant's were not furnished with the following:

1. Sgt. McDonald's report of October 3, 1972, saying that the fingerprints were identifiable.
2. October 13, 1972 report of Sgt. McDonald stating his knowledge of the major fingerprint exemplars were printed by Agent Varcoe (at trial McDonald denied knowledge of such major prints).
3. Report or reports of comparison in October, 1972, or any time thereafter of the defendant's major prints with the identifiable prints.

Defendant Zinni alleges that the failure to turn this information over to the defendants prior to their trials was a willfull suppression of material evidence by the prosecution resulting in a deprivation of their constitutional right to a fair trial pursuant to the Sixth Amendment of the United States Constitution and Brady vs. Maryland, 383 U. S. 835 and related cases. U.S. vs. Polisi, 416 F² 338, 578 (1967 2nd cir.); U.S. vs. Keough, 391 F² 138 (1968 2nd Cir.); Kyle vs. U.S., 297 F² 307 (1961 2nd Cir.).

Defendant Zinni further states that:

1. This evidence was discovered after the trial. The trial ended June 12, 1974, Varcoe's supplemental report is dated June 17, 1974. Counsel for Zinni learned of these reports on June 28, 1974.

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2. Failure to learn of the existence of this evidence was not due to a lack of diligence.

3. The evidence is material to the issues on trial, principally to who placed the bomb.

4. The evidence is of such a nature that if introduced it probably would result in an acquittal in the event of a re-trial.

Defendant respectfully requests this Honorable Court:

a) to afford defendant a hearing on this motion so that witnesses may be subpoenaed and testify and give evidence in open court.

b) that following such hearing the Court grant defendant a new trial.

c) grant such other relief as this Honorable Court deems fit and just under the circumstances.

By his Attorney,

C. Thomas Zinni, Esquire
53 Mount Vernon Street
Boston, Massachusetts 02108

CERTIFICATE OF NOTICE

I hereby certify that a copy of the above-motion has been mailed, postage prepaid, to Paul Coffey, Special U.S. Attorney, 430 Main Street, Hartford, Connecticut, 06103 on this 16th day of July, 1974.

C. Thomas Zinni, Esquire



MICROFILM

22

FILE

OCT 24 1974
NEW HAVEN

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
S. DISTRICT COURT
NEW HAVEN, CONN.

----- x
UNITED STATES OF AMERICA, :
Plaintiff, :
vs. : CRIM. No. H-524
WILLIAM MARRAPESE and :
NICHOLAS ZINNI, : MEMORANDUM
Defendants. :
----- x

MURPHY, D.J.

Both defendants have made identical motions for a new trial based on the Government's alleged willful suppression of material evidence and on newly discovered evidence.

On June 13, 1974, each defendant was convicted by a jury before us of three crimes related to the killing of one Daniel Lapolla, namely: the first was a charge of conspiracy to violate Daniel Lapolla's civil rights (i.e., to be a Government witness) (18 U.S.C. § 241); the second was an obstruction of justice charge (18 U.S.C. § 1503); and the third accused the defendants of the use of an explosive to commit a felony (18 U.S.C. § 844(h)(1)).

The killing was accomplished by the placing of a dynamite bomb to the door of Lapolla's house in Oneco, Connecticut. It exploded when Lapolla opened the door to enter his home on September 29, 1972. At trial there was

no testimony or evidence that either of the above named defendants or their two co-defendants, Robert Joost and David Guillette,* had placed the bomb in Lapolla's home.

There was, however, expert testimony relating to some latent partial fingerprints found on a battery and friction tape which were concededly part of the bomb device. Sgt. McDonald of the Connecticut State Police, who found such prints shortly after the murder, testified that he compared such latent prints with exemplar prints** of all four defendants Marrapese, Zinni, Joost and Guillette, and one Sitko, and reached the conclusion:

"That the area involved in the latent prints * * * was not produced on the fingerprint cards." /of any of the four defendants or Sitko./ (Trial Transcript, p. 761).

"Q. Did any of the exemplar fingerprint cards that you had of the five individuals you named give you the part of the finger in sufficiently clear detail to make or to reach a firm conclusion with respect to the prints you had on Government Exhibit 15? /The exemplar prints of the four defendants and Sitko./

"A. No, sir." (Trial Transcript, p. 762).

* All four are named in the indictment H-524, but prior to trial before Chief Judge Clarie, Marrapese and Zinni were severed, and were tried before us commencing May 29, 1974. Joost and Guillette were convicted before Chief Judge Clarie in December 1973.

** These fingerprints were ordered taken by Chief Judge Clarie on October 12, 1972, to assist the grand jury investigating the killing of Lapolla. They were physically taken by a Federal agent named Varcos in the presence of Sgt. McDonald, and included palm prints and prints of each individual finger which was rolled in an attempt to get the entire imprint of the skin from nail to nail. All of these exemplars were given to McDonald within a day or two.

1 On cross-examination, Sgt. McDonald indicated
2 that if the fingers of the defendants Marrapese and Zinni
3 were rolled in the fingerprinting process in such a manner
4 as to cover the area on his latent prints, he would be able
5 to make a comparison. Defendants' counsel then suggested
6 that their clients, Marrapese and Zinni, be so fingerprinted.
7 This was done during a recess, and on recall Sgt. McDonald
8 testified that his comparison during the recess of such
9 prints with the latent prints showed that neither Marrapese's
10 nor Zinni's prints were those of the latent prints. Of
11 course, Joost and Guillette were not reprinted since they
12 were not then on trial.
13

14 The thrust of defendants' motions for a new trial
15 consists of serious unsworn allegations by out-of-state
16 counsel for defendants Marrapese and Zinni. These allega-
17 tions were to the effect that after the fingerprinting of
18 the defendants on October 12, 1972, pursuant to the order
19 of Chief Judge Clarie:
20

21
22 " * * * a prosecution fingerprint expert
23 or experts then made comparisons of these
24 fingerprint samples of the 'side portions'
25 of the fingers of defendants Marrapese, Zinni,
26 Joost, Guillette and one Edward Sitko with
27 'identifiable' fingerprints found on the bomb
28 device, such comparisons being made long prior
29 to either the trial of Joost and Guillette in
30 December 1973 or the trial of Marrapese and
31 Zinni in June 1974, and further that such
32 comparisons revealed that the 'identifiable'
fingerprints found on the bomb device were
not those of either Marrapese, Zinni, Joost,
Guillette or Sitko.

"Petitioner further respectfully alleges
that the result of such comparisons was never

revealed to the attorneys for Marrapese, Zinni, Joost or Guillette and that, rather, the prosecution then willfully suppressed the following evidentiary material:

"1. The fingerprint experts report or reports of the above described comparisons which exonerated /sic/ Marrapese, Zinni, Joost, Guillette and Sitko.

"2. The report of Government fingerprint expert officer McDonald dated October 3, 1972, which stated that the fingerprints on the bomb device were 'identifiable.'" (Marrapese's Reply to Government's Response, filed July 26, 1974) (emphasis supplied).

At the hearing which we ordered, defendants produced not one iota of proof to support their charges of flagitious Government conduct.

The Government agent, Varcos, examined the same prints and filed a report, dated November 20, 1972, which was given to counsel for the defendants pursuant to their motion for discovery of any scientific analysis long prior to both trials. In this report Varcos expressed the opinion "that the latent prints in question are unidentifiable due to the lack of sufficient ridge detail and identifiable characteristics." This is, and was, the only fingerprint report the Government had up to the morning of the trial (June 4, 1974) when Sgt. McDonald testified.

This report is McDonald's report dated October 3, 1972 (which is four days after the murder of Lapolla). McDonald showed it to the Government prosecutor for the first time in the morning of June 4, 1974, shortly before

1 he was called as a witness that day. We assume, rightly
2 we believe, that defendants' counsel received the report
3 from the Government prosecutor that morning also. (In the
4 District of Connecticut, 3500 material is usually given to
5 defense counsel prior to trial, and seldom is it marked as
6 an exhibit for identification.) We make this assumption
7 because defendants' counsel, on cross-examination of McDonald,
8 used the word "identifiable" three times, and in Marrapese's
9 Reply to Government's Response, referred to and quoted from
10 above, he stated on page 2:

13 "During the trial of Marrapese and Zinni in
14 May and June 1974 Officer McDonald's report
15 of October 3, 1972 stating that the finger-
16 prints on the bomb device were 'identifiable'
17 was first revealed."

18 A copy of this report is attached hereto as Exhibit A.

19 We accept McDonald's testimony that he made and
20 filed such report with his superior on the date it bears,
21 October 3, 1972, with reluctant hesitancy and with suspicion
22 because (1) the Connecticut prosecutor for Windham County
23 (Oneco is in Windham County), never saw it or heard of it
24 and he was the attorney in charge of the inquiry; (2) Sgt.
25 Burke of the Connecticut State Police, who was in charge of
26 the State investigation, never saw it nor was he ever told
27 that some of the latent prints were "identifiable"; (3)
28 not only did the Government prosecutor (Coffey) not see it
29 until the morning Sgt. McDonald testified, but he was never
30 told that some of the latent prints were "identifiable";
31 (4) Varcos, the Federal agent for whom an appointment had been
32

made with McDonald to examine the prints jointly at the Bethany Laboratory of the Connecticut State Police, examined everything in McDonald's file on November 13 to 15, 1972 (McDonald having taken off on a vacation despite the appointment), and Varcos never saw such a report; and (5) the Federal agent (Weronik) in charge of the Federal investigation, who spoke to McDonald many times over many months, denied that McDonald ever showed him the report or told him about it.

A great deal of blather was made at the hearing about the word "identifiable" in this report and whether the Government knew that in McDonald's opinion some of the latent prints he found on the night of the murder were "identifiable." Whether the Government prosecutor knew that McDonald so opined or not, he certainly acted quickly enough when he made a motion before Chief Judge Clarie for an order to compel the defendants to submit to major fingerprinting in order to assist the grand jury in its investigation of the death of Lapolla, and received Judge Clarie's order and arranged for the taking of the prints on October 12, 1972. The prints were taken of the four defendants and Sitko by Federal agent Varcos in the presence of McDonald, and subsequently Varcos filed his report, dated November 20, 1972, which was given to counsel long before either trial. McDonald, who was furnished with these new prints the next day, strangely did nothing except, according to his testimony, make a memorandum acknowledging receipt and filing it with

1 his superior. A copy of this Exhibit is attached hereto
2 as Exhibit B. It is to be noted that McDonald made no
3 mention that the prints were not made in a manner he wished,
4 a subject he stressed at the hearing but which was contra-
5 dicted by Varcos.
6

7 McDonald testified that he told Santos, the
8 Public Defender lawyer for Guillette, early in October 1973
9 that some of the latent prints were "identifiable."
10 Although Santos denied this, Santos physically received
11 early in October 1973 all of the McDonald prints and all
12 of the major prints of the defendants taken on October 12,
13 1972, which included, as we said before, both the palm prints
14 and the individual finger rolled prints of the four de-
15 fendants and Sitko. Although Santos denied that McDonald
16 told him that the latent prints were "identifiable", we find
17 that McDonald did tell him. This is confirmed by the
18 official Court file. There is on file a request, dated
19 November 26, 1973, by Santos for an order that he be author-
20 ized to engage Gerard J. Engert, 2015 Lucerne Avenue, Silver
21 Spring, Maryland, as a technical fingerprint expert for the
22 analysis and examination of latent prints, and that such
23 expert be paid \$50 for his services. This was approved by
24 Chief Judge Clarie on November 30, 1973. Mr. Engert was,
25 by order of Chief Judge Clarie dated January 29, 1974, paid
26 the \$50. This voucher was signed by attorney Santos on the
27 same day the Judge approved the payment.
28
29
30
31
32

Inasmuch as Santos acted as the agent for the other

attorneys representing the three other defendants in receiving these prints, as we find he did, all defendants had ample opportunity, long before either trial, to receive expert opinions as to the fingerprints.

After the verdict in the Marrapese and Zinni trial on June 13, 1974, Varcos and McDonald, at the urging of the prosecutor, jointly reexamined, on June 17, 1974, all the prints, and Varcos made another report, dated June 18, 1974, a copy of which was also given to counsel. A copy of that report is attached hereto as Exhibit C.

At the hearing Varcos testified:

"A Mr. McDonald and myself, at the request of Assistant U. S. Attorney Coffey, went over all the evidence together in order to attempt to reach a conclusion. At this point, I'd have to explain that report that you refer to of June 18th.

"The determination was that where it says in that report that latent prints numbered 4 and 6 were the same latent print and that it was determined that there was a sufficient amount of characteristics in order to make a positive identification possibly, that opinion is that of Sergeant McDonald.

"The latter part of that paragraph is my opinion, where I still believe that the prints are an overlapped print, and further explained on the last part of that report is that the negative results is that in my opinion there is not enough detail in any of those latent prints in order to positively identify or eliminate anybody.

"Q Well, do I understand you correctly now that part of the report that you filed as Special Agent with your Department is not, in fact, part of your opinion; it is part of Sergeant McDonald's report?

"A Correct. It's a joint opinion of

74

1 what Sergeant McDonald's opinion is as com-
2 pared to my opinion. It's just that, unfor-
3 tunately, the wording wasn't --

4 "Q Well, actually part of the report
5 then that is dated June 18th - Exhibit D is it?

6 THE COURT: Yes.

7 "Q -- D, you don't agree with all of it?

8 "A No, sir, I don't.

9 MR. ZINNI: I have no further
10 questions.

11 "BY THE COURT:

12 "Q Would you, for my sake, take the
13 exhibit and tell us in exact words what you
14 say is Mr. McDonald's conclusion and what you
15 say is yours?

16 "A Yes, sir. On the explanation of
17 the report of findings on number 2 it says:

18 'Exhibit 4 and 6 were determined to be the
19 same latent print and upon re-examination it was
20 determined that there was a sufficient number of
21 characteristics appearing on the latent print to
22 make an identification possible. It is also the
23 opinion of the undersigned that the latent print
24 in question is, in fact, a combination of ridges
25 from two separate areas of the fingers and/or
26 palms.'

27 The first part of that explanation --

28 "Q To wit?

29 "A referring to make an identification
30 possible that there was a sufficient number of
31 characteristics is actually the opinion of Ser-
32 geant McDonald who believes this particular latent
33 print to be one area of the hand. And he states
34 that there is sufficient number of points in
35 there to make an identification.

36 "My opinion is that they are overlapped,
37 they're two sections --

38 "Q When you talk about your opinion,
39 will you quote what you say --

"A 'In my opinion the latent print in question is, in fact, a combination of ridges from two separate areas of the fingers and/or palms'.

"And I do not believe that they can be positively identified.

"Q Are you reading now the words 'and I do not believe'; are they in the report?

"A No, sir.

"Q See, that's my problem.

"Would you read verbatim the words which you say express your opinion'?

"A I'll refer to number 4 and it says:

'All of the above partial latent prints were examined and compared with the known fingerprints and palm prints of suspects submitted with negative results.'

"The 'negative results' terminology is that the latent prints were not sufficiently clear in detail in order to make any determination.

"Q is that a word of art in your science? Do you understand my question?

"A Yes, sir. That's the way I use 'negative results'.

"Q Does everybody in the trade or in the profession use that the same way?

"A I believe so.

"Q Then it would be a word of art in the science of reading fingerprints?

"A Yes, sir.

"Q In other words, if I called X, he said he was an expert, he came from Philadelphia and I asked him what 'negative results' mean, he would tell me exactly what you told me, in substance?

"A Right, sir.

"Q Is that right?

"A Yes, sir.

"THE COURT: Thank you.

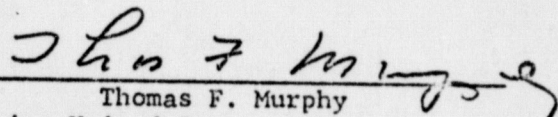
"Are you sitting down finished?

"MR. ZINNI: Yes, your Honor. I have no further questions."

We accept his explanation.

Since the facts do not support defendants' contentions of either Government suppression or newly discovered evidence, there is no need to discuss the relevant law.

The motions are denied.


Thomas F. Murphy
Senior United States District Judge

Dated: Waterbury, Ct., October ~~22~~, 1974.

UNITED STATES DISTRICT COURT
FOR
DISTRICT OF CONNECTICUT
WATERBURY

FILED

Oct 29 8 36 AM '74

U. S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES OF AMERICA

VS.

WILLIAM MARRAPESE
and
NICHOLAS ZINNI

H-524 MSC ✓
H-540

MOTION TO SUBMIT
ADDITIONAL EVIDENCE ON
DEFENDANT'S MOTION FOR
A NEW TRIAL ON NEWLY
DISCOVERED EVIDENCE AND
PROSECUTION MISCONDUCT

Now comes the Defendant Marrapese and moves this
Honorable Court as follows:

1. That on or about September 5, 1974 this Court held an evidentiary hearing on defendant's motion for a new trial.
2. That on or about the aforesaid date one James McDonald testified that he found identifiable fingerprints on the bombing device in this case and that these fingerprints were not those of the Defendant Marrapese or Co-Defendant Zinni.
3. At that time, Mr. McDonald could not say that the

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U.S. DISTRICT COURT
NEW HAVEN, CONN.

*Motion denied as per y with
in our memorandum of Oct 29, 1974
Nov. 6. 74 JLS 7 bkg 27
USDC*

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,
Plaintiff

VS.

WILLIAM MARRAPESE and
NICHOLAS D. ZINNI,
Defendants

★
★
★
★
★
★
★
★

NO. H-524

DEFENDANT-APPELLANT ZINNI'S MOTION FOR A NEW TRIAL BASED UPON ADDITIONAL NEWLY
DISCOVERED EVIDENCE, (AND/OR PROSECUTION SUPPRESSION OF MATERIAL EVIDENCE.)

Now comes the defendant-appellant Nicholas D. Zinni, through counsel, and respectfully moves that this Honorable Court grant a new trial based upon additional newly discovered evidence (and/or prosecution suppression of material evidence.)

1. During the trial of defendant-appellants William Marrapese and Nicholas D. Zinni, prosecution fingerprint expert, Lieutenant James McDonald, Connecticut State Police, testified that if he were furnished with additional "major" fingerprint samples of Marrapese and Zinni he could compare them with the three "identifiable" latent partial fingerprints found on the bomb device. Both Marrapese and Zinni requested that they be permitted to give such samples, and did so during a noon recess. Following the recess, Lieutenant McDonald testified that he had made such a comparison over the noon recess and that in his expert opinion the three "identifiable" prints on the bomb device were not those of either Marrapese or Zinni. The Court then asked Lieutenant McDonald if the reason he could not also make comparisons of co-defendants Robert Joost and David Guillette was because he did not have any additional "major" fingerprint samples from them, and Lieutenant McDonald agreed that this was

2.

correct. Defendants Joost and Guillette were at that time in Federal Prison outside the State of Connecticut having been found guilty at their separate trial on these same charges in December, 1973.

2. Subsequent to their conviction, and sentencing in June, 1974, defendant-appellants Marrapese and Zinni filed a prior Motion for a New Trial based upon (a) newly discovered evidence and (b) prosecution suppression of material evidence, and a hearing thereon was held before the Honorable Judge Thomas Murphy in the United States District Court at Waterbury, Connecticut on September 5, and 6, 1974. Legal briefs were then filed in support thereof by the prosecution and defense attorneys for both defendant-appellants William Marrapese and Nicholas Zinni, and the Court reserved decision thereon pending the Court's review of the testimony given at the hearing and the authorities cited in the legal briefs submitted.

3. Before Justice Murphy in Waterbury, Connecticut, reached a decision on this motion, a hearing commenced on October 3, 1974, before the Honorable Justice T. Emmet Clairie in the United States District Court in Hartford, Connecticut, on a Motion for a New Trial on identical grounds filed by defendant-appellants Robert Joost and David Guillette. At this hearing, one Warren C. Messenger, a criminalist, testified that, in his opinion, there were three "identifiable" latent partial prints on the bomb device, this corroborating the testimony of fingerprint expert James McDonald, in this regard. Fingerprint expert, James McDonald, (then retired from the Connecticut State Police and employed as the Director of the Crime Laboratory for the New Haven City Police Department) also testified at this hearing on Joost and Guillette through their respective counsel, stated their request to the Court that they furnish additional "major" fingerprint samples to Mr. McDonald for comparison

3.

with the three "identifiable" latent partial prints found on the bomb device. The Court then continued the hearing to October 21, 1974, for this purpose.

On October 21, 1974, fingerprint expert James McDonald testified that based upon his comparisons made between October 3, and October 21, 1974, of the additional "major" fingerprint samples furnished by Joost and Guillette, the three "identifiable" latent partial fingerprints found on the bomb device, in his expert opinion, were not those of either co-defendant Robert Joost or David Guillette. Defendant-appellant Zinni requests, that the transcript copies of the testimony of witnesses Messenger and McDonald given on October 3, and October 21, 1974, annexed to Defendant-appellant, Marrapese's Motion for a New Trial Based Upon Additional Newly Discovered Evidence, (and/or Prosecution Suppression of Material Evidence.) as Exhibits A and B respectively, be incorporated herein in their entirety as a part of this Motion with permission of this Honorable Court.

4. On October 22, 1974, defendant-appellants Marrapese and Zinni filed a "Motion To Submit Additional Evidence" on their previously filed "Motion for a New Trial based upon (a) Newly Discovered Evidence and (b) Prosecution Suppression of Material Evidence." Justice Murphy had not as yet, as of this date of October 22, 1974, decided this Motion for a New Trial of defendant-appellants Marrapese and Zinni. This Motion to Submit Additional Evidence in paragraph 6 thereof, contained the information concerning the testimony at the hearing on Joost and Guillette's Motion for a New Trial by fingerprint expert James McDonald that the fingerprints on the bomb device were not those of Joost or Guillette. The Motion to Submit Additional Evidence also explained in paragraph 7 thereof, that the testimony of fingerprint expert McDonald eliminating Joost and Guillette was material, in that at the trial of defendants

Marrapese and Zinni, the prosecution argued to the jury the theory of 'agency' that is, that Joost and Guillette acted as agents of Marrapese and Zinni in placing the bomb, and that Marrapese and Zinni acted in a so-called "managerial capacity." The Motion to Submit Additional Evidence further explained in paragraph 8 thereof that Raymond Daniels, counsel for Marrapese, had ordered a transcript of fingerprint expert McDonald's testimony at the hearing on Joost and Guillette's Motion for a New Trial at Hartford, Connecticut and that the Court Reporter had stated that it would be ready in about 2-3 weeks.

5. However, on October 22, 1974, Justice Murphy denied defendant-appellants Marrapese's and Zinni's Motion for a New Trial (a) based upon Newly Discovered Evidence and (b) Prosecution Suppression of Material Evidence.

6. And on October 25, 1974, Justice Murphy denied defendant-appellants' Motion to Submit Additional Evidence but stated therein:

"In denying this motion we will assume that Sergeant McDonald would testify substantially as indicated in the motion papers."

7. On Monday, November 11, 1974, defendant-appellant Marrapese was first furnished by the stenographic reporter with a copy of the testimony of criminalist Warren C. Messenger and fingerprint expert James McDonald given at the hearing on the Motion for a New Trial of Joost and Guillette on October 3, 1974, and October 21, 1974.

8. Defendant-appellant Zinni respectfully alleges that the testimony of these two witnesses, especially James McDonald, is material to his cause in that it is strong evidence attacking the very basis of the 'agency' or "managerial" theory argued to the jury by the prosecutor at the trial of Marrapese and Zinni in June, 1974.

9. Defendant-appellant Zinni further states that this evidence was unknown to him at the time of his trial in this matter and with the exercise of due diligence could not have been discovered by him during trial, and further

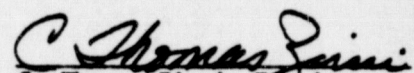
that this evidence is not cumulative, but is highly material, and that such evidence would make a different result probable at a re-trial on these charges.

10. The defendant-appellant Zinni respectfully requests that the transcript copies of the testimony of the witnesses Messenger and McDonald given on October 3, and 21, 1974, annexed to Defendant-appellant, Marrapese's Motion for a New Trial Based Upon Additional Newly Discovered Evidence, (and/or Prosecution Suppression of Material Evidence.) as Exhibits A and B respectively, be incorporated herein in their entirety, with permission of this Honorable Court.

11. The defendant-appellant Zinni further stipulates and agrees that the Court may decide this present Motion by reading the content of the transcript annexed to the Motion of the defendant-appellant, Marrapese, Exhibit A and B without any further evidence submitted thereon.

WHEREFORE, defendant-appellant Zinni respectfully requests that this Honorable Court (a) grant his present Motion for a New Trial based upon Newly Discovered Evidence for the foregoing reasons, and (b) grant such other and further relief as to this Honorable Court shall deem mete and just and as the circumstances shall require.

Respectfully submitted,
NICHOLAS D. ZINNI,
By his attorney,


C. Thomas Zinni, Esquire
53 Mount Vernon Street
Boston, Massachusetts 02108

Dated: November 13, 1974

82
FILED

OCT 25 8 30 AM '74
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

----- x
UNITED STATES OF AMERICA, :

Plaintiff, :

vs. :

WILLIAM MARRAPESE and
NICHOLAS ZINNI,

Defendants. :

524 NSC ✓
CRIM. No. H-540

MEMORANDUM

----- x
MURPHY, D.J.

Defendants' motion to submit additional evidence on defendants' motion for a new trial, dated October 22, 1974, is denied.

In denying the motion we will assume that Sgt. McDonald would testify substantially as indicated in the motion papers.

This is an order.

THOMAS P. MURPHY
Thomas P. Murphy
Senior United States District Judge

Dated: Waterbury, Ct., October 25, 1974.

12

83

FILED

Nov 4 11 17 AM '74

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES OF AMERICA

VS.

NICHOLAS D. ZINNI

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NO. H-524

NOTICE OF APPEAL

Notice is hereby given that Nicholas D. Zinni, Defendant above-named hereby appeals to the United States District Court of Appeals for the Second Circuit from the denial of the Defendant's Motion for a New Trial; based on 1) Newly Discovered Evidence and 2) Prosecution's Suppression of Material Evidence on the 24 th day of October, 1974.

Dated at Boston, Massachusetts this 2nd day of November, 1974.

THE DEFENDANT
NICHOLAS D. ZINNI

BY: C. Thomas Zinni
C. Thomas Zinni, Esquire
53 Mount Vernon Street
Boston, Massachusetts 02108

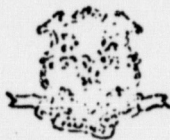
85

Exhibit C

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 11-14-01 BY 60322 UCBAW

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 11-14-01 BY 60322 UCBAW

STATE BUREAU OF IDENTIFICATION



IN REPLY REFER TO

IDB-72-0165-C
STERLING

STATE OF CONNECTICUT
DEPARTMENT OF STATE POLICE
100 WASHINGTON STREET
HARTFORD, CONNECTICUT 06101

LATENT PRINT EXAMINATION

October 3, 1972

REQUESTED BY: Lt. Louis Leitkowski - CO of Troop 'D'.

REPORT TO: Same as above.

EVIDENCE Q-1 --- One Ray-O-Vac heavy duty battery, taped onto
SUBMITTED: wood framing with electrical tape.

PROBLEM: Process Q-1 for latent prints.

FINDINGS: Three identifiable partial latents were processed from Q-1.
Two partials are identifiable to the area of the friction ridge
pattern on the extreme sides of the fingers, and one could be
palm area.

COMMENTS: The latent partials will be kept on file for examination with
the described friction ridge area when submitted when suspects
are fingerprinted. It is requested that 'Major' printing be
done, as the needed partials area is not normally printed when
a suspect is being fingerprinted.

James E. McDonald
JAMES E. McDONALD
FINGERPRINT EXAMINER

86

Supplementary

ALCOHOL, TOBACCO & FIREARMS

LATENT FINGERPRINT ANALYSIS

CASE NO.

24090173154HR(SF)

CONTROL NO.

ST 442-2031(72)(SMA)(SF)

153-72

AGENCY

Bureau of Alcohol, Tobacco & Firearms

LOCATION

Hartford, Conn.

TO:

Special Agent in Charge
Bureau of Alcohol, Tobacco & Firearms
P.O. Box 9115
J.F.K. Post Office
Boston, Mass. 02203

EVIDENCE SUBMITTED BY:

Group Supervisor,
John H. Waddock

DATE SUBMITTED

DATE COMPLETED

6-17-74

TAKEN FROM
RECV'D. FROM
FOUND AT

Re-examined at SF Atty's. office, Hartford, Conn.

EVIDENCE SUBMITTED FOR EXAMINATION

- A) Ex #1 - photograph of partial latent print found on battery.
Ex #2 - photograph of partial latent print found on battery.
Ex #3 - photograph of partial latent print found on battery.
Ex #4 - photograph of partial latent print found on battery.
Ex #5 - photograph of lift of partial latent print found on battery.
Ex #6 - photograph of lift of partial latent print found on battery.
B) Five(5) sets of fingerprints and palm prints of the following: David G. Guilletta;
Robert M. Joost; William L. Marrapese; Nicholas D. Zinni; Edward Sitko

SERVICES REQUESTED

Examine and compare for possible identification

REPORT OF FINDINGS-

☐ POSITIVE IDENTIFICATION ☒ NEGATIVE IDENTIFICATION ☐ NEGATIVE FINDINGS ☐ NO CONCLUSION
☐ OTHER

On June 17, 1974, the above mentioned photographs of partial latent prints were re-examined by the undersigned with the following results:

- 1) Ex #1 and 5 were determined to be the same latent print and of no value for identification.
- 2) Ex #4 and 6 were determined to be the same latent print and upon re-examination it was determined that there was a sufficient number of characteristics appearing on the latent print to make an identification possible. It is also the opinion of the undersigned that the latent print in question is in fact a combination of ridges from two separate areas of the fingers and/or palms.
- 3) Ex #2 and 3 are of no value due to lack of sufficient detail.
- 4) All of the above partial latent prints were examined and compared with the known fingerprints and palm prints of suspects submitted, with negative results.

SITION OF EVIDENCE

☐ DESTROYED ☒ RETURNED ☒ ALL ☐ PARTIAL

☐ HELD☐ PENDING TRIAL OR OTHER ACTION☐ AWAITING PROPER DISPOSITION

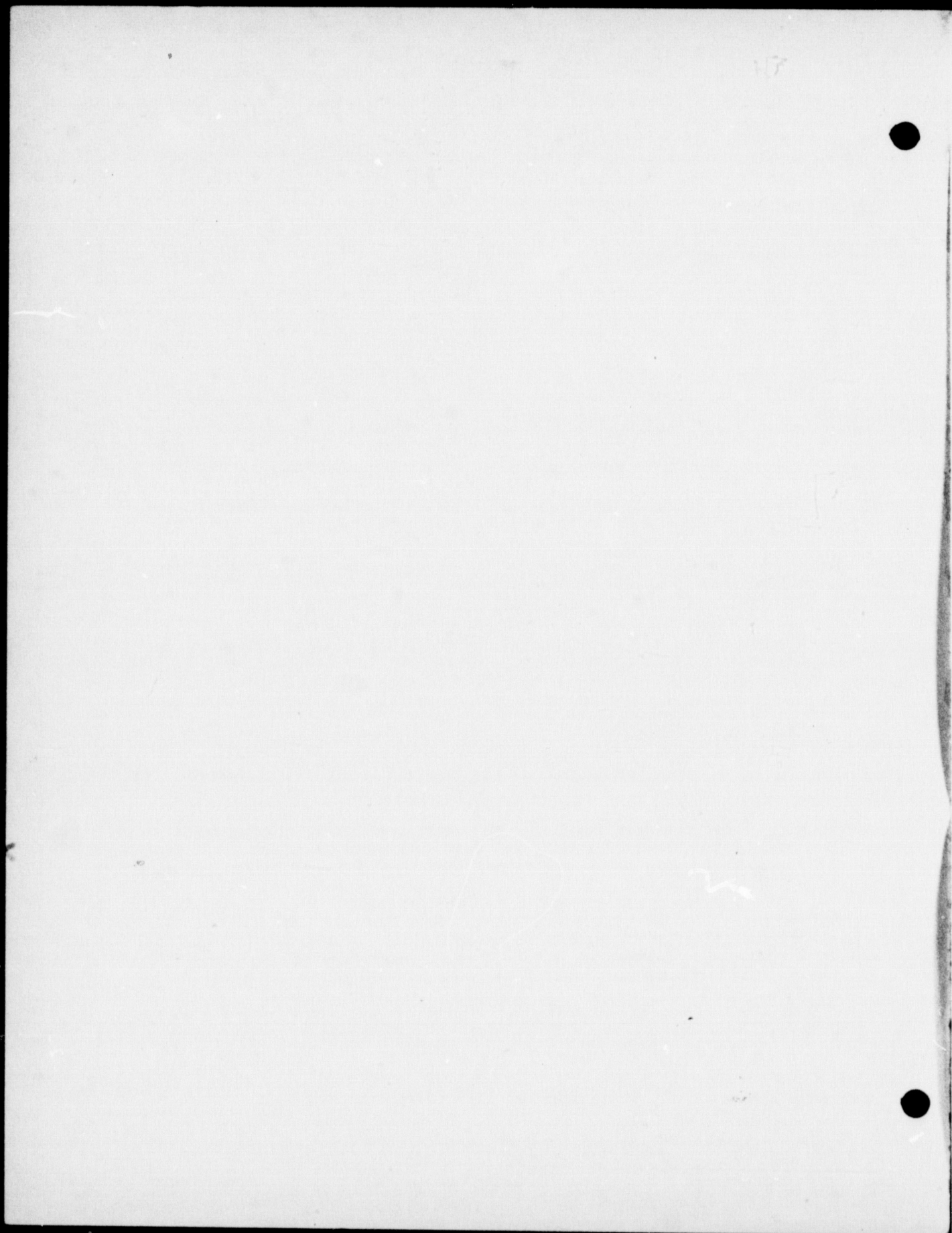
DATE OF REPORT

6-18-74

Anthony J. Torres, Special Agent
DEPARTMENT OF THE TREASURY

ATF FORM 5-179 (REV. 12-60)

-54-



C. Thomas Zinni

ATTORNEY AT LAW
53 MOUNT VERNON STREET
BOSTON, MASS.
02108

617-523 { 3245
3246

February 17, 1975

A. Daniel Fusaro, Clerk
United States Court of Appeals
for the Second Circuit
Foley Square
New York, New York 10007

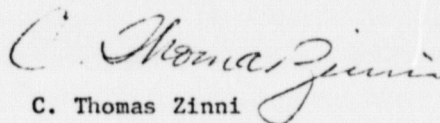
Re: United States v. Nicholas D. Zinni et al--#74-2649
Re: United States v. Nicholas D. Zinni et al--#74-1941

Dear Sir:

Enclosed please find original and three copies of the appellant's brief and appendix in connection with both of the above-captioned matters.

I hereby certify that copies of the foregoing briefs and appendixes have been delivered in hand this day to Messrs. Paul E. Coffey, Hubert Santos, and James Wade; and copies of same have been mailed postage prepaid this day to Raymond Daniels, Esquire.

Very truly yours,


C. Thomas Zinni

CTZ/s
Enclosures
cc: Paul E. Coffey, Esquire